

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 9

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IN THE MATTER OF:

Dynamic Plating / X Metal Finishing  
Upland, San Bernardino County, California

Donald Pattison, Brian Pattison,  
Martha King, and Audrey James,

Respondents.

Proceeding Under Sections 104, 106(a),  
107 and 122 of the Comprehensive  
Environmental Response, Compensation,  
and Liability Act, 42 U.S.C. §§ 9604,  
9606(a), 9607 and 9622

CERCLA Docket No. 2018-11

**ADMINISTRATIVE SETTLEMENT  
AGREEMENT AND ORDER ON  
CONSENT FOR REMOVAL ACTIONS**

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## **I. JURISDICTION AND GENERAL PROVISIONS**

1. This Administrative Settlement Agreement and Order on Consent (“Settlement”) is entered into voluntarily by the United States Environmental Protection Agency (EPA) and Donald Pattison, Brian Pattison, Martha King, and Audrey James (“Respondents”). This Settlement provides for the performance of a removal action by Respondents and the payment of certain response costs incurred by the United States at or in connection with the “Dynamic Plating Removal Site” (the “Site”) generally located at 952 West 9th Street in Upland, San Bernardino County, California.

2. This Settlement is issued under the authority vested in the President of the United States by Sections 104, 106(a), 107, and 122 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. §§ 9604, 9606(a), 9607 and 9622 (CERCLA). This authority was delegated to the Administrator of EPA on January 23, 1987, by Executive Order 12580, 52 Fed. Reg. 2923 (Jan. 29, 1987), and further delegated to Regional Administrators by EPA Delegation Nos. 14-14C (Administrative Actions through Consent Orders, Jan. 18, 2017) and 14-14D (Cost Recovery Non-Judicial Agreements and Administrative Consent Orders, Jan. 18, 2017). These authorities were further redelegated by the Regional Administrator of EPA Region 9 to the Superfund Branch Chiefs by Region 9 delegations 14-14-A (R9 1290.13, September 29, 1997), 14-14-C (R9 1290.15, September 29, 1997), and 14-14-D (R9 1290.20, September 29, 1997). The Regional delegations remain consistent with the national delegations.

3. EPA has notified the State of California (the “State”) of this action pursuant to Section 106(a) of CERCLA, 42 U.S.C. § 9606(a).

4. EPA and Respondents recognize that this Settlement has been negotiated in good faith and that the actions undertaken by Respondents in accordance with this Settlement do not constitute an admission of any liability. Respondents do not admit, and retain the right to controvert in any subsequent proceedings other than proceedings to implement or enforce this Settlement, the validity of the findings of facts, conclusions of law, and determinations in Sections IV (Findings of Fact) and V (Conclusions of Law and Determinations) of this Settlement. Respondents agree to comply with and be bound by the terms of this Settlement and further agree that they will not contest the basis or validity of this Settlement or its terms.

## **II. PARTIES BOUND**

5. This Settlement is binding upon EPA and upon Respondents and their heirs, successors, and assigns. Any change in ownership or corporate status of a Respondent including, but not limited to, any transfer of assets or real or personal property shall not alter such Respondent’s responsibilities under this Settlement.

6. Respondents are jointly and severally liable for carrying out all activities required by this Settlement. In the event of the insolvency or other failure of any Respondent to implement the requirements of this Settlement, the remaining Respondents shall complete all such requirements.

7. Each undersigned Respondent certifies that he or she is fully authorized to enter into the terms and conditions of this Settlement and to execute and legally bind Respondents to this Settlement.

8. Respondents shall provide a copy of this Settlement to each contractor hired to perform the Work required by this Settlement and to each person representing any Respondents with respect to the Site or the Work, and shall condition all contracts entered into hereunder upon performance of the Work in conformity with the terms of this Settlement. Respondents or their contractors shall provide written notice of the Settlement to all subcontractors hired to perform any portion of the Work required by this Settlement. Respondents shall nonetheless be responsible for ensuring that their contractors and subcontractors perform the Work in accordance with the terms of this Settlement.

### **III. DEFINITIONS**

9. Unless otherwise expressly provided in this Settlement, terms used in this Settlement that are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Settlement or its attached appendices, the following definitions shall apply:

“Action Memorandum” shall mean the EPA Action Memorandum relating to the Site signed on March 29, 2018, by the Regional Administrator, EPA Region 9, or her delegate, and all attachments thereto. The “Action Memorandum” is attached as Appendix A.

“Affected Property” shall mean all real property at the Site and any other real property where EPA determines, at any time, that access or land, water, or other resource use restrictions are needed to implement the removal action, including, but not limited to, the following property: 952 West 9th Street in Upland, San Bernardino County, California, more specifically described as Lot 4, Tract 6370, as per map recorded in Book 80, pages 24-25 of Maps, in the office of the County Recorder of said County.

“CERCLA” shall mean the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §§ 9601-9675.

“Day” or “day” shall mean a calendar day. In computing any period of time under this Settlement, where the last day would fall on a Saturday, Sunday, or federal or State holiday, the period shall run until the close of business of the next working day.

“Effective Date” shall mean the effective date of this Settlement as provided in Section XXX.

“EPA” shall mean the United States Environmental Protection Agency and its successor departments, agencies, or instrumentalities.

“EPA Hazardous Substance Superfund” shall mean the Hazardous Substance Superfund established by the Internal Revenue Code, 26 U.S.C. § 9507.

“DTSC” shall mean the California Department of Toxic Substances Control and any successor departments or agencies of the State.

“Interest” shall mean interest at the rate specified for interest on investments of the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually on October 1 of each year, in accordance with 42 U.S.C. § 9607(a). The applicable rate of interest shall be the rate in effect at the time the interest accrues. The rate of interest is subject to change on October 1 of each year. Rates are available online at <https://www.epa.gov/superfund/superfund-interest-rates>.

“Municipal solid waste” or “MSW” shall mean waste material: (a) generated by a household (including a single or multifamily residence); or (b) generated by a commercial, industrial, or institutional entity, to the extent that the waste material (1) is essentially the same as waste normally generated by a household; (2) is collected and disposed of with other municipal solid waste as part of normal municipal solid waste collection services; and (3) contains a relative quantity of hazardous substances no greater than the relative quantity of hazardous substances contained in waste material generated by a typical single-family household.

“National Contingency Plan” or “NCP” shall mean the National Oil and Hazardous Substances Pollution Contingency Plan promulgated pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, codified at 40 C.F.R. Part 300, and any amendments thereto.

“Owner Respondent” shall mean any Respondent that owns or controls any Affected Property, including Donald Pattison, Brian Pattison, Martha King, and Audrey James. The clause “Owner Respondent’s Affected Property” means Affected Property owned or controlled by Owner Respondent.

“Paragraph” shall mean a portion of this Settlement identified by an Arabic numeral or an upper or lower case letter.

“Parties” shall mean EPA and Respondents.

“RCRA” shall mean the Solid Waste Disposal Act, 42 U.S.C. §§ 6901-6992 (also known as the Resource Conservation and Recovery Act).

“Respondents” shall mean Donald Pattison, Brian Pattison, Martha King, and Audrey James.

“Response Costs” shall mean all costs, including, but not limited to, direct and indirect costs, that the United States incurs in reviewing or developing deliverables submitted pursuant to this Settlement, in overseeing implementation of the Work, or otherwise implementing, overseeing, or enforcing this Settlement, including but not limited to, payroll costs, contractor costs, travel costs, laboratory costs, the costs incurred pursuant to Section IX (Property Requirements) (including, but not limited to, cost of attorney time and any monies paid to secure or enforce access, including, but not limited to, the amount of just compensation), Section XIII (Emergency Response and Notification of Releases), Paragraph 70 (Work Takeover), Paragraph 93 (Access to Financial Assurance), community

involvement (including, but not limited to, the costs of any technical assistance grant under Section 117(e) of CERCLA, 42 U.S.C. § 9617(e)), Section XV (Dispute Resolution), and all litigation costs. Response Costs shall also include Agency for Toxic Substances and Disease Registry (ATSDR) costs regarding the Site. Response Costs include past response costs which include all costs, including, but not limited to, direct and indirect costs, that the United States paid at or in connection with the Site through the Effective Date of this settlement.

“Section” shall mean a portion of this Settlement identified by a Roman numeral.

“Settlement” shall mean this Administrative Settlement Agreement and Order on Consent and all appendices attached hereto (listed in Section XXIX (Integration/Appendices)). In the event of conflict between this Settlement and any appendix, this Settlement shall control.

“Site” shall mean the Dynamic Plating Removal Site, encompassing approximately 45,738 square feet, located at 952 West 9th Street in Upland, San Bernardino County, California, and depicted generally on the map attached as Appendix B.

“Dynamic Plating Special Account” shall mean the special account within the EPA Hazardous Substance Superfund, established for the Site by EPA pursuant to Section 122(b)(3) of CERCLA, 42 U.S.C. § 9622(b)(3).

“State” shall mean the State of California.

“Transfer” shall mean to sell, assign, convey, lease, mortgage, or grant a security interest in, or where used as a noun, a sale, assignment, conveyance, or other disposition of any interest by operation of law or otherwise.

“United States” shall mean the United States of America and each department, agency, and instrumentality of the United States, including EPA.

“Waste Material” shall mean (a) any “hazardous substance” under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14); (b) any pollutant or contaminant under Section 101(33) of CERCLA, 42 U.S.C. § 9601(33); (c) any “solid waste” under Section 1004(27) of RCRA, 42 U.S.C. § 6903(27); and (d) any “hazardous material” as may be defined under State law.

“Work” shall mean all activities and obligations Respondents are required to perform under this Settlement except those required by Section XI (Record Retention).

#### **IV. FINDINGS OF FACT**

10. The following are findings of fact:

a. Respondents are the current owners of the Site and have been the owners since at least August 15, 2008.

b. The Site has been used as a metal plating shop since 1964.

c. The most recent plating shop tenant at the Site was Dynamic Plating, which began its occupancy in 1999.

d. In or around October 2017, Dynamic Plating vacated the Site and ceased rental payments to the Respondents.

e. The findings set forth in the Action Memorandum attached as Appendix A are incorporated into the Findings of Fact.

f. The extent of remaining contamination remains to be characterized and addressed.

## **V. CONCLUSIONS OF LAW AND DETERMINATIONS**

11. Based on the Findings of Fact set forth above, and the administrative record, EPA has determined that:

a. The Dynamic Plating Removal Site is a “facility” as defined by Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

b. The contamination found at the Site, as identified in the Findings of Fact above, includes “hazardous substance(s)” as defined by Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

c. Each Respondent is a “person” as defined by Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

d. Each Respondent is a responsible party under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a). Respondents Donald Pattison, Brian Pattison, Martha King, and Audrey James are the “owner(s)” and/or “operator(s)” of the facility, as defined by Section 101(20) of CERCLA, 42 U.S.C. § 9601(20), and within the meaning of Section 107(a)(1) of CERCLA, 42 U.S.C. § 9607(a)(1).

e. The conditions described in Paragraph 10 of the Findings of Fact above constitute an actual or threatened “release” of a hazardous substance from the facility as defined by Section 101(22) of CERCLA, 42 U.S.C. § 9601(22).

f. EPA determined in an Action Memorandum dated March 29, 2018, that the conditions at the Site may constitute an imminent and substantial endangerment to the public health or welfare or the environment because of an actual or threatened release of a hazardous substance from the facility within the meaning of Section 106(a) of CERCLA, 42 U.S.C. § 9606(a).

g. The removal action required by this Settlement is necessary to protect the public health, welfare, or the environment and, if carried out in compliance with the terms of this Settlement, will be consistent with the NCP, as provided in Section 300.700(c)(3)(ii) of the NCP.

## **VI. SETTLEMENT AGREEMENT AND ORDER**

12. Based upon the Findings of Fact, Conclusions of Law, and Determinations set forth above, and the administrative record, it is hereby Ordered and Agreed that Respondents shall comply with all provisions of this Settlement, including, but not limited to, all appendices to this Settlement and all documents incorporated by reference into this Settlement.

## **VII. DESIGNATION OF CONTRACTOR, PROJECT COORDINATOR, AND ON-SCENE COORDINATOR**

13. Respondents shall retain one or more contractors or subcontractors to perform the Work and shall notify EPA of the names, titles, addresses, telephone numbers, email addresses, and qualifications of such contractors or subcontractors within three (3) days after the Effective Date. Respondents shall also notify EPA of the names, titles, contact information, and qualifications of any other contractors or subcontractors retained to perform the Work at least three (3) days prior to commencement of such Work. EPA retains the right to disapprove of any or all of the contractors and/or subcontractors retained by Respondents. If EPA disapproves of a selected contractor or subcontractor, Respondents shall retain a different contractor or subcontractor and shall notify EPA of that contractor's or subcontractor's name, title, contact information, and qualifications within three (3) days after EPA's disapproval. The qualifications of the persons undertaking the Work for Respondents shall be subject to EPA's review for verification based on objective assessment criteria (e.g., experience, capacity, technical expertise) and that they do not have a conflict of interest with respect to the project.

14. Within three (3) days after the Effective Date, Respondents shall designate a Project Coordinator who shall be responsible for administration of all actions by Respondents required by this Settlement and shall submit to EPA the designated Project Coordinator's name, title, address, telephone number, email address, and qualifications. To the greatest extent possible, the Project Coordinator shall be present on Site or readily available during Site work. EPA retains the right to disapprove of the designated Project Coordinator who does not meet the requirements of Paragraph 13. If EPA disapproves of the designated Project Coordinator, Respondents shall retain a different Project Coordinator and shall notify EPA of that person's name, title, contact information, and qualifications within three (3) days following EPA's disapproval. Notice or communication relating to this Settlement from EPA to Respondents' Project Coordinator shall constitute notice or communication to all Respondents.

15. EPA has designated Robert Wise of the Emergency and Enforcement Response Branch, Region 9, as its On-Scene Coordinator (OSC). EPA and Respondents shall have the right, subject to Paragraph 14, to change their respective designated OSC or Project Coordinator. Respondents shall notify EPA three (3) days before such a change is made. The initial notification by Respondents may be made orally, but shall be promptly followed by a written notice.

16. The OSC shall be responsible for overseeing Respondents' implementation of this Settlement. The OSC shall have the authority vested in an OSC by the NCP, including the authority to halt, conduct, or direct any Work required by this Settlement, or to direct any other



removal action undertaken at the Site. Absence of the OSC from the Site shall not be cause for stoppage of work unless specifically directed by the OSC.

## **VIII. WORK TO BE PERFORMED**

17. Respondents shall perform, at a minimum, all actions necessary to implement the Action Memorandum. The actions to be implemented generally include, but are not limited to, the following phases:

- a. plating shop assessment;
- b. removal of hazardous substances, debris, and plating equipment;
- c. building and floor assessment;
- d. demolition of all structures and foundations to be determined based upon building and floor assessment results;
- e. soil assessment;
- f. soil remediation to be determined based on the soil assessment results; and
- g. post removal assessment.

18. The work shall be performed in accordance with any best management practices for demolition issued by the San Bernardino County Stormwater Program, if any buildings, structures, or foundations are demolished. Any activities that are expected to generate vapors, dust, or fumes shall be monitored for air quality, and appropriate dust suppression measures shall be taken.

19. For any regulation or guidance referenced in the Settlement, the reference will be read to include any subsequent modification, amendment, or replacement of such regulation or guidance. Such modifications, amendments, or replacements apply to the Work only after Respondents receive notification from EPA of the modification, amendment, or replacement.

### **20. Work Plan and Implementation**

a. Within seven (7) days after the Effective Date, in accordance with Paragraph 21 (Submission of Deliverables), Respondents shall submit to EPA for approval a draft work plan for performing the removal action (the "Removal Work Plan") generally described in Paragraph 17 above. The draft Removal Work Plan shall provide a description of, and an expeditious schedule for, the actions required by this Settlement. If the initial draft Removal Work Plan does not include performance of all seven phases listed in Paragraph 17 above, it shall propose a schedule for EPA approval for the submission of subsequent Work Plans for the remaining phases of work. The subsequent Work Plans shall be subject to EPA approval in accordance with this Paragraph.

b. EPA may approve, disapprove, require revisions to, or modify the draft Removal Work Plan in whole or in part. If EPA requires revisions, Respondents shall submit a revised draft Removal Work Plan within five (5) days after receipt of EPA's notification of the required revisions. Respondents shall implement the Removal Work Plan as approved in writing by EPA in accordance with the schedule approved by EPA. Once approved, or approved with modifications, the Removal Work Plan, the schedule, and any subsequent modifications shall be incorporated into and become fully enforceable under this Settlement.

c. Upon approval or approval with modifications of the Removal Work Plan Respondents shall commence implementation of the Work in accordance with the schedule included therein. Respondents shall not commence or perform any Work except in conformance with the terms of this Settlement.

d. Unless otherwise provided in this Settlement, any additional deliverables that require EPA approval under the Removal Work Plan shall be reviewed and approved by EPA in accordance with this Paragraph.

## **21. Submission of Deliverables**

### **a. General Requirements for Deliverables**

(1) Except as otherwise provided in this Settlement, Respondents shall direct all submissions required by this Settlement to the OSC at Robert Wise, 2245 N. Palm Drive, Suite 100, Signal Hill, CA 90755; phone number 562-889-2572; email address [wise.robert@epa.gov](mailto:wise.robert@epa.gov). Respondents shall submit all deliverables required by this Settlement or any approved work plan to EPA in accordance with the schedule set forth in such plan.

(2) Respondents shall submit all deliverables in electronic form. Technical specifications for sampling and monitoring data and spatial data are addressed in Paragraph 21.b. All other deliverables shall be submitted to EPA in the form specified by the OSC. If any deliverable includes maps, drawings, or other exhibits that are larger than 8.5 x 11 inches, Respondents shall also provide EPA with paper copies of such exhibits.

### **b. Technical Specifications for Deliverables**

(1) Sampling and monitoring data should be submitted in standard Regional Electronic Data Deliverable (EDD) format. Other delivery methods may be allowed if electronic direct submission presents a significant burden or as technology changes.

(2) Spatial data, including spatially-referenced data and geospatial data, should be submitted: (a) in the ESRI File Geodatabase format; and (b) as unprojected geographic coordinates in decimal degree format using North American Datum 1983 (NAD83) or World Geodetic System 1984 (WGS84) as the datum. If applicable, submissions should include the collection method(s). Projected coordinates may optionally be included but must be documented.

Spatial data should be accompanied by metadata, and such metadata should be compliant with the Federal Geographic Data Committee (FGDC) Content Standard for Digital Geospatial Metadata and its EPA profile, the EPA Geospatial Metadata Technical Specification. An add-on metadata editor for ESRI software, the EPA Metadata Editor (EME), complies with these FGDC and EPA metadata requirements and is available at <https://www.epa.gov/geospatial/epa-metadata-editor>.

(3) Each file must include an attribute name for each site unit or sub-unit submitted. Consult <https://www.epa.gov/geospatial/geospatial-policies-and-standards> for any further available guidance on attribute identification and naming.

(4) Spatial data submitted by Respondents does not, and is not intended to, define the boundaries of the Site.

22. **Health and Safety Plan.** Within seven (7) days after the Effective Date, Respondents shall submit for EPA review and comment a plan that ensures the protection of the public health and safety during performance of on-site work under this Settlement. The plan shall comply with all currently applicable Occupational Safety and Health Administration (OSHA) regulations found at 29 C.F.R. Part 1910, including the General Site Worker Standards pursuant to 29 C.F.R. § 1910.120(b) – (o). If EPA determines that it is appropriate, the plan shall also include contingency planning. Respondents shall incorporate all changes to the plan recommended by EPA and shall implement the plan during the pendency of the removal action. Respondents shall submit to EPA the contractor’s proof of compliance with 29 C.F.R. § 1910.120: Hazardous Waste Operations and Emergency Response (HAZWOPER). Proof of compliance shall include the written Safety and Health Program pursuant to 29 C.F.R. § 1910.120(b)(2); medical surveillance program pursuant to 29 C.F.R. § 1910.120(f); proof of personnel training pursuant to 29 C.F.R. § 1910.120(e) including initial and refresher training; and the respiratory protection program pursuant to 29 C.F.R. § 1910.134. If employees speak languages other than English as their primary language, the contractor should be able to produce these documents in those languages.

## 23. **Quality Assurance, Sampling, and Data Analysis**

a. Respondents shall use quality assurance, quality control, and other technical activities and chain of custody procedures for all samples consistent with “EPA Requirements for Quality Assurance Project Plans (QA/R5)” EPA/240/B-01/003 (March 2001, reissued May 2006), “Guidance for Quality Assurance Project Plans (QA/G-5)” EPA/240/R-02/009 (December 2002), and “Uniform Federal Policy for Quality Assurance Project Plans,” Parts 1-3, EPA/505/B-04/900A-900C (March 2005).

b. **Sampling and Analysis Plan.** Within thirty (30) days after the Effective Date, Respondents shall submit a Sampling and Analysis Plan to EPA for review and approval. This plan shall consist of a Field Sampling Plan (FSP) and a Quality Assurance Project Plan (QAPP) that is consistent with the Removal Work Plan, the NCP and applicable guidance documents, including, but not limited to, “Guidance for Quality Assurance Project Plans (QA/G-

5)” EPA/240/R-02/009 (December 2002), “EPA Requirements for Quality Assurance Project Plans (QA/R-5)” EPA 240/B-01/003 (March 2001, reissued May 2006), and “Uniform Federal Policy for Quality Assurance Project Plans,” Parts 1-3, EPA/505/B-04/900A-900C (March 2005). Upon its approval by EPA, the Sampling and Analysis Plan shall be incorporated into and become enforceable under this Settlement.

c. Respondents shall ensure that EPA and State personnel and their authorized representatives are allowed access at reasonable times to all laboratories utilized by Respondents in implementing this Settlement. In addition, Respondents shall ensure that such laboratories shall analyze all samples submitted by EPA pursuant to the QAPP for quality assurance, quality control, and technical activities that will satisfy the stated performance criteria as specified in the QAPP and that sampling and field activities are conducted in accordance with the Agency’s “EPA QA Field Activities Procedure,” CIO 2105-P-02.1 (9/23/2014) available at <http://www.epa.gov/irmpoli8/epa-qa-field-activities-procedures>. Respondents shall ensure that the laboratories they utilize for the analysis of samples taken pursuant to this Settlement meet the competency requirements set forth in EPA’s “Policy to Assure Competency of Laboratories, Field Sampling, and Other Organizations Generating Environmental Measurement Data under Agency-Funded Acquisitions” available at <http://www.epa.gov/measurements/documents-about-measurement-competency-under-acquisition-agreements> and that the laboratories perform all analyses according to accepted EPA methods. Accepted EPA methods consist of, but are not limited to, methods that are documented in the EPA’s Contract Laboratory Program (<http://www.epa.gov/clp>), SW 846 “Test Methods for Evaluating Solid Waste, Physical/Chemical Methods” (<https://www.epa.gov/hw-sw846>), “Standard Methods for the Examination of Water and Wastewater” (<http://www.standardmethods.org/>), 40 C.F.R. Part 136, “Air Toxics - Monitoring Methods” (<http://www3.epa.gov/ttnamti1/airtox.html>).

d. However, upon approval by EPA, and after providing the State seven (7) days for an opportunity to review and comment, Respondents may use other appropriate analytical method(s), as long as (i) quality assurance/quality control (QA/QC) criteria are contained in the method(s) and the method(s) are included in the QAPP, (ii) the analytical method(s) are at least as stringent as the methods listed above, and (iii) the method(s) have been approved for use by a nationally recognized organization responsible for verification and publication of analytical methods, e.g., EPA, ASTM, NIOSH, OSHA, etc. Respondents shall ensure that all laboratories they use for analysis of samples taken pursuant to this Settlement have a documented Quality System that complies with ASQ/ANSI E4:2014 “Quality management systems for environmental information and technology programs - Requirements with guidance for use” (American Society for Quality, February 2014), and “EPA Requirements for Quality Management Plans (QA/R-2)” EPA/240/B-01/002 (March 2001, reissued May 2006), or equivalent documentation as determined by EPA. EPA may consider Environmental Response Laboratory Network (ERLN) laboratories, laboratories accredited under the National Environmental Laboratory Accreditation Program (NELAP), or laboratories that meet International Standardization Organization (ISO 17025) standards or other nationally recognized programs as meeting the Quality System requirements. Respondents shall ensure that all field methodologies utilized in collecting samples for subsequent analysis pursuant to this Settlement are conducted in accordance with the procedures set forth in the QAPP approved by EPA.

e. Upon request, Respondents shall provide split or duplicate samples to EPA and the State or their authorized representatives. Respondents shall notify EPA not less than seven (7) days in advance of any sample collection activity unless shorter notice is agreed to by EPA. In addition, EPA and the State shall have the right to take any additional samples that EPA or the State deems necessary. Upon request, EPA and the State shall provide to Respondents split or duplicate samples of any samples they take as part of EPA's oversight of Respondents' implementation of the Work.

f. Respondents shall submit to EPA the results of all sampling and/or tests or other data obtained or generated by or on behalf of Respondents with respect to the Site and/or the implementation of this Settlement.

g. Respondents waive any objections to any data gathered, generated, or evaluated by EPA, the State or Respondents in the performance or oversight of the Work that has been verified according to the QA/QC procedures required by the Settlement or any EPA-approved Work Plans or Sampling and Analysis Plans. If Respondents object to any other data relating to the Work, Respondents shall submit to EPA a report that specifically identifies and explains its objections, describes the acceptable uses of the data, if any, and identifies any limitations to the use of the data. The report must be submitted to EPA within 15 days after the monthly progress report containing the data.

24. **Progress Reports.** Respondents shall submit a written progress report to EPA concerning actions undertaken pursuant to this Settlement every two weeks, or as otherwise requested by EPA, from the date of receipt of EPA's approval of the Removal Work Plan until issuance of Notice of Completion of Work pursuant to Section XXVIII, unless otherwise directed in writing by the OSC. These reports shall describe all significant developments during the preceding period, including the actions performed and any problems encountered, analytical data received during the reporting period, and the developments anticipated during the next reporting period, including a schedule of actions to be performed, anticipated problems, and planned resolutions of past or anticipated problems.

25. **Final Report.** Within thirty (30) days after completion of all Work required by this Settlement, other than continuing obligations listed in Paragraph 100 (notice of completion), Respondents shall submit for EPA review and approval a final report summarizing the actions taken to comply with this Settlement. The final report shall conform, at a minimum, with the requirements set forth in Section 300.165 of the NCP entitled "OSC Reports." The final report shall include a good faith estimate of total costs or a statement of actual costs incurred in complying with the Settlement, a listing of quantities and types of materials removed off-Site or handled on-Site, a discussion of removal and disposal options considered for those materials, a listing of the ultimate destination(s) of those materials, a presentation of the analytical results of all sampling and analyses performed, and accompanying appendices containing all relevant documentation generated during the removal action (e.g., manifests, invoices, bills, contracts, and permits). The final report shall also include the following certification signed by a responsible corporate official of a Respondent or Respondents' Project Coordinator: "I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons

who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I have no personal knowledge that the information submitted is other than true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.”

## **26. Off-Site Shipments**

a. Respondents may ship hazardous substances, pollutants and contaminants from the Site to an off-Site facility only if they comply with Section 121(d)(3) of CERCLA, 42 U.S.C. § 9621(d)(3), and 40 C.F.R. § 300.440. Respondents will be deemed to be in compliance with CERCLA Section 121(d)(3) and 40 C.F.R. § 300.440 regarding a shipment if Respondents obtain a prior determination from EPA that the proposed receiving facility for such shipment is acceptable under the criteria of 40 C.F.R. § 300.440(b).

b. Respondents may ship Waste Material from the Site to an out-of-state waste management facility only if, prior to any shipment, they provide written notice to the appropriate state environmental official in the receiving facility’s state and to the OSC. This written notice requirement shall not apply to any off-Site shipments when the total quantity of all such shipments will not exceed ten cubic yards. The written notice must include the following information, if available: (1) the name and location of the receiving facility; (2) the type and quantity of Waste Material to be shipped; (3) the schedule for the shipment; and (4) the method of transportation. Respondents also shall notify the state environmental official referenced above and the OSC of any major changes in the shipment plan, such as a decision to ship the Waste Material to a different out-of-state facility. Respondents shall provide the written notice after the award of the contract for the removal action and before the Waste Material is shipped.

c. Respondents may ship Investigation Derived Waste (IDW) from the Site to an off-Site facility only if they comply with Section 121(d)(3) of CERCLA, 42 U.S.C. § 9621(d)(3), 40 C.F.R. § 300.440, EPA’s “Guide to Management of Investigation Derived Waste,” OSWER 9345.3-03FS (Jan. 1992), and any IDW-specific requirements contained in the Action Memorandum. Wastes shipped off-Site to a laboratory for characterization, and RCRA hazardous wastes that meet the requirements for an exemption from RCRA under 40 C.F.R. § 261.4(e) shipped off-Site for treatability studies, are not subject to 40 C.F.R. § 300.440.

## **IX. PROPERTY REQUIREMENTS**

27. **Agreements Regarding Access and Non-Interference.** Respondents shall, with respect to Owner Respondent’s Affected Property: (i) provide the EPA, the State, Respondents, and their representatives, contractors, and subcontractors with access at all reasonable times to such Affected Property to conduct any activity regarding the Settlement, including those activities listed in Paragraph 27.a (Access Requirements); and (ii) refrain from using such Affected Property in any manner that EPA determines will pose an unacceptable risk to human health or to the environment due to exposure to Waste Material, or interfere with or adversely affect the implementation, integrity, or protectiveness of the removal action. Respondents shall provide a copy of such access agreement(s) to EPA and the State.

a. **Access Requirements.** The following is a list of activities for which access is required regarding the Affected Property:

- (1) Monitoring the Work;
- (2) Verifying any data or information submitted to the United States or the State;
- (3) Conducting investigations regarding contamination at or near the Site;
- (4) Obtaining samples;
- (5) Assessing the need for, planning, implementing, or monitoring response actions;
- (6) Assessing implementation of quality assurance and quality control practices as defined in the approved quality assurance quality control plan;
- (7) Implementing the Work pursuant to the conditions set forth in Paragraph 70 (Work Takeover);
- (8) Inspecting and copying records, operating logs, contracts, or other documents maintained or generated by Respondents or their agents, consistent with Section X (Access to Information);
- (9) Assessing Respondents' compliance with the Settlement;
- (10) Determining whether the Affected Property is being used in a manner that is prohibited or restricted, or that may need to be prohibited or restricted under the Settlement; and
- (11) Implementing, monitoring, maintaining, reporting on, and enforcing any land, water, or other resource use restrictions regarding the Affected Property.

b. **Land, Water, or Other Resource Use Restrictions.** The following is a list of land, water, or other resource use restrictions applicable to the Affected Property:

- (1) Respondents shall maintain a temporary fence around entire Site, as directed by EPA OSC Robert Wise, to prevent the public from accessing the Site;
- (2) Respondents shall not grant access to Dynamic Plating employees or representatives for the purpose of conducting cleanup operations or removing plating equipment absent EPA's permission to conduct specified activities; and

(3) No hazardous substances or chemicals used in the plating shop shall be removed from the Site for reuse without the express permission of EPA and the jurisdiction in which the substances or chemicals are proposed to be reused.

28. If EPA determines in a decision document prepared in accordance with the NCP that institutional controls in the form of state or local laws, regulations, ordinances, zoning restrictions, or other governmental controls or notices are needed, Respondents shall cooperate with EPA's and the State's efforts to secure and ensure compliance with such institutional controls.

29. In the event of any Transfer of the Affected Property, unless EPA otherwise consents in writing, Respondents shall continue to comply with their obligations under the Settlement, including their obligation to secure access and ensure compliance with any land, water, or other resource use restrictions regarding the Affected Property.

**30. Notice to Successors-in-Title**

a. Owner Respondent shall, within 15 days after the Effective Date, submit for EPA approval a notice to be filed regarding Owner Respondent's Affected Property in the appropriate land records. The notice must: (1) include a proper legal description of the Affected Property; (2) provide notice to all successors-in-title that: (i) the Affected Property is part of, or related to, the Site; (ii) EPA has selected a removal action for the Site; and (iii) potentially responsible parties have entered into an Administrative Settlement Agreement and Order on Consent requiring implementation of that removal action; and (3) identify the name, docket number, and effective date of this Settlement. Owner Respondent shall record the notice within 10 days after EPA's approval of the notice and submit to EPA, within 10 days thereafter, a certified copy of the recorded notice.

b. The Site is currently subject to a contract to Transfer the Affected Property to JW Realty Trust. Owner Respondents shall, within 15 days of the effective date of this Settlement, notify the proposed transferee that EPA has selected a removal action regarding the Site and that potentially responsible parties have entered into an Administrative Settlement Agreement and Order on Consent requiring implementation of such removal action, (identifying the name, docket number, and the effective date of this Settlement), and Owner Respondent shall provide EPA with a copy of the notice that it provided to the proposed transferee.

c. Owner Respondent shall, prior to entering into any other contract to Transfer its Affected Property, or 60 days prior to Transferring its Affected Property, whichever is earlier:

(1) Notify the proposed transferee that EPA has selected a removal action regarding the Site, that potentially responsible parties have entered into an Administrative Settlement Agreement and Order on Consent requiring implementation of such removal action, (identifying the name, docket number, and the effective date of this Settlement); and



(2) Notify EPA of the name and address of the proposed transferee and provide EPA with a copy of the above notice that it provided to the proposed transferee.

31. Notwithstanding any provision of the Settlement, EPA and the State retain all of their access authorities and rights, as well as all of their rights to require land, water, or other resource use restrictions, including enforcement authorities related thereto under CERCLA, RCRA, and any other applicable statute or regulations.

## **X. ACCESS TO INFORMATION**

32. Respondents shall provide to EPA and the State, upon request, copies of all records, reports, documents, and other information (including records, reports, documents, and other information in electronic form) (hereinafter referred to as “Records”) within Respondents’ possession or control or that of their contractors or agents relating to activities at the Site or to the implementation of this Settlement, including, but not limited to, sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence, or other documents or information regarding the Work. Respondents shall also make available to EPA and the State, for purposes of investigation, information gathering, or testimony, their employees, agents, or representatives with knowledge of relevant facts concerning the performance of the Work.

### **33. Privileged and Protected Claims**

a. Respondents may assert all or part of a Record requested by EPA or the State is privileged or protected as provided under federal law, in lieu of providing the Record, provided Respondents comply with Paragraph 33.b, and except as provided in Paragraph 33.c.

b. If Respondents assert such a privilege or protection, they shall provide EPA and the State with the following information regarding such Record: its title; its date; the name, title, affiliation (e.g., company or firm), and address of the author, of each addressee, and of each recipient; a description of the Record’s contents; and the privilege or protection asserted. If a claim of privilege or protection applies only to a portion of a Record, Respondents shall provide the Record to EPA and the State in redacted form to mask the privileged or protected portion only. Respondents shall retain all Records that they claim to be privileged or protected until EPA and the State have had a reasonable opportunity to dispute the privilege or protection claim and any such dispute has been resolved in Respondents’ favor.

c. Respondents may make no claim of privilege or protection regarding: (1) any data regarding the Site, including, but not limited to, all sampling, analytical, monitoring, hydrogeologic, scientific, chemical, radiological, or engineering data, or the portion of any other Record that evidences conditions at or around the Site; or (2) the portion of any Record that Respondents are required to create or generate pursuant to this Settlement.

34. **Business Confidential Claims.** Respondents may assert that all or part of a Record provided to EPA and the State under this Section or Section XI (Record Retention) is business confidential to the extent permitted by and in accordance with Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), and 40 C.F.R. § 2.203(b). Respondents shall segregate and

clearly identify all Records or parts thereof submitted under this Settlement for which Respondents assert business confidentiality claims. Records that Respondents claim to be confidential business information will be afforded the protection specified in 40 C.F.R. Part 2, Subpart B. If no claim of confidentiality accompanies Records when they are submitted to EPA and the State, or if EPA has notified Respondents that the Records are not confidential under the standards of Section 104(e)(7) of CERCLA or 40 C.F.R. Part 2, Subpart B, the public may be given access to such Records without further notice to Respondents.

35. Notwithstanding any provision of this Settlement, EPA and the State retain all of their information gathering and inspection authorities and rights, including enforcement actions related thereto, under CERCLA, RCRA, and any other applicable statutes or regulations.

## **XI. RECORD RETENTION**

36. Until ten (10) years after EPA provides Respondents with notice, pursuant to Section XXVIII (Notice of Completion of Work), that all Work has been fully performed in accordance with this Settlement, Respondents shall preserve and retain all non-identical copies of Records (including Records in electronic form) now in their possession or control, or that come into their possession or control, that relate in any manner to their liability under CERCLA with regard to the Site, provided, however, that Respondents who are potentially liable as owners or operators of the Site must retain, in addition, all Records that relate to the liability of any other person under CERCLA with respect to the Site. Each Respondent must also retain, and instruct its contractors and agents to preserve, for the same period of time specified above all non-identical copies of the last draft or final version of any Records (including Records in electronic form) now in their possession or control or that come into their possession or control that relate in any manner to the performance of the Work, provided, however, that each Respondent (and its contractors and agents) must retain, in addition, copies of all data generated during the performance of the Work and not contained in the aforementioned Records required to be retained. Each of the above record retention requirements shall apply regardless of any corporate retention policy to the contrary.

37. At the conclusion of the document retention period, Respondents shall notify EPA at least 90 days prior to the destruction of any such Records, and, upon request by EPA or the State, and except as provided in Paragraph 33 (Privileged and Protected Claims), Respondents shall deliver any such Records to EPA or the State.

38. Each Respondent certifies individually that, to the best of its knowledge and belief, after thorough inquiry, it has not altered, mutilated, discarded, destroyed, or otherwise disposed of any Records (other than identical copies) relating to its potential liability regarding the Site since notification of potential liability by EPA or the State and that it has fully complied with any and all EPA and State requests for information regarding the Site pursuant to Sections 104(e) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e), and Section 3007 of RCRA, 42 U.S.C. § 6927, and state law.

## **XII. COMPLIANCE WITH OTHER LAWS**

39. Nothing in this Settlement limits Respondents' obligations to comply with the requirements of all applicable state and federal laws and regulations, except as provided in Section 121(e) of CERCLA, 42 U.S.C. § 9621(e), and 40 C.F.R. §§ 300.400(e) and 300.415(j). In accordance with 40 C.F.R. § 300.415(j), all on-site actions required pursuant to this Settlement shall, to the extent practicable, as determined by EPA, considering the exigencies of the situation, attain applicable or relevant and appropriate requirements (ARARs) under federal environmental or state environmental or facility siting laws. Respondents shall include ARARs selected by EPA in the Action Memorandum.

40. No local, state, or federal permit shall be required for any portion of the Work conducted entirely on-site (i.e., within the areal extent of contamination or in very close proximity to the contamination and necessary for implementation of the Work), including studies, if the action is selected and carried out in compliance with Section 121 of CERCLA, 42 U.S.C. § 9621. Where any portion of the Work that is not on-site requires a federal or state permit or approval, Respondents shall submit timely and complete applications and take all other actions necessary to obtain and to comply with all such permits or approvals. Respondents may seek relief under the provisions of Section XVI (Force Majeure) for any delay in the performance of the Work resulting from a failure to obtain, or a delay in obtaining, any permit or approval required for the Work, provided that they have submitted timely and complete applications and taken all other actions necessary to obtain all such permits or approvals. This Settlement is not, and shall not be construed to be, a permit issued pursuant to any federal or state statute or regulation.

## **XIII. EMERGENCY RESPONSE AND NOTIFICATION OF RELEASES**

41. **Emergency Response.** If any event occurs during performance of the Work that causes or threatens to cause a release of Waste Material on, at, or from the Site that either constitutes an emergency situation or that may present an immediate threat to public health or welfare or the environment, Respondents shall immediately take all appropriate action to prevent, abate, or minimize such release or threat of release. Respondents shall take these actions in accordance with all applicable provisions of this Settlement, including, but not limited to, the Health and Safety Plan. Respondents shall also immediately notify the OSC or, in the event of his/her unavailability, the Regional Duty Officer at 800-300-2193 of the incident or Site conditions. In the event that Respondents fail to take appropriate response action as required by this Paragraph, and EPA takes such action instead, Respondents shall reimburse EPA for all costs of such response action not inconsistent with the NCP pursuant to Section XIV (Payment of Response Costs).

42. **Release Reporting.** Upon the occurrence of any event during performance of the Work that Respondents are required to report pursuant to Section 103 of CERCLA, 42 U.S.C. § 9603, or Section 304 of the Emergency Planning and Community Right-to-know Act (EPCRA), 42 U.S.C. § 11004, Respondents shall immediately orally notify the OSC or, in the event of his/her unavailability, the Regional Duty Officer at 800-300-2193, and the National Response Center at (800) 424-8802. This reporting requirement is in addition to, and not in lieu

of, reporting under Section 103 of CERCLA, 42 U.S.C. § 9603, and Section 304 of the Emergency Planning and Community Right-To-Know Act of 1986, 42 U.S.C. § 11004.

43. For any event covered under this Section, Respondents shall submit a written report to EPA within 7 days after the onset of such event, setting forth the action or event that occurred and the measures taken, and to be taken, to mitigate any release or threat of release or endangerment caused or threatened by the release and to prevent the reoccurrence of such a release or threat of release.

#### **XIV. PAYMENT OF RESPONSE COSTS**

44. **Payments for Response Costs.** Respondents shall pay to EPA all Response Costs not inconsistent with the NCP.

a. **Periodic Bills.** On a periodic basis, EPA will send Respondents a bill requiring payment that includes a cost summary report that includes direct and indirect costs incurred by EPA, its contractors, subcontractors, and the United States Department of Justice. Respondents shall make all payments within 30 days after Respondents' receipt of each bill requiring payment, except as otherwise provided in Paragraph 46 (Contesting Response Costs), and in accordance with Paragraphs 44.a and 44.b (Payments for Response Costs). Respondents shall make payment to EPA by Fedwire Electronic Funds Transfer (EFT) or Automated Clearinghouse (ACH) using the following instructions.

For EFT payment:

Federal Reserve Bank of New York  
ABA = 021030004  
Account = 68010727  
SWIFT address = FRNYUS33  
33 Liberty Street  
New York, NY 10045  
Field Tag 4200 of the Fedwire message should read "D 68010727 Environmental Protection Agency"

and shall reference Site/Spill ID Number A9BM and the EPA docket number for this action.

For ACH payment:

Respondents shall make payment to EPA by Automated Clearinghouse (ACH) to:

500 Rivertech Court  
Riverdale, Maryland 20737  
Contact – John Schmid 202-874-7026 or REX, 1-866-234-5681  
ABA = 051036706  
Transaction Code 22 - checking  
Environmental Protection Agency  
Account 310006  
CTX Format

and shall reference Site/Spill ID Number A9BM and the EPA docket number for this action.

b. At the time of payment, Respondents shall send notice that payment has been made to Robert Wise by email at [wise.robert@epa.gov](mailto:wise.robert@epa.gov), and to the EPA Cincinnati Finance Office by email at [cinwd\\_acctsreceivable@epa.gov](mailto:cinwd_acctsreceivable@epa.gov), or by mail to

EPA Cincinnati Finance Office  
26 W. Martin Luther King Drive  
Cincinnati, Ohio 45268

c. Such notice shall reference Site/Spill ID Number A9BM and the EPA docket number for this action.

45. **Interest.** In the event that any payment for Response Costs is not made by the date required, Respondents shall pay Interest on the unpaid balance. The Interest on Response Costs shall begin to accrue on the date of the bill. The Interest shall accrue through the date of Respondents' payment. Payments of Interest made under this Paragraph shall be in addition to such other remedies or sanctions available to the United States by virtue of Respondents' failure to make timely payments under this Section, including but not limited to, payment of stipulated penalties pursuant to Section XVII (Stipulated Penalties).

46. **Contesting Response Costs.** Respondents may initiate the procedures of Section XV (Dispute Resolution) regarding payment of any Response Costs billed under Paragraph 44 (Payments for Response Costs) if they determine that EPA has made a mathematical error or included a cost item that is not within the definition of Response Costs, or if they believe EPA incurred excess costs as a direct result of an EPA action that was inconsistent with a specific provision or provisions of the NCP. To initiate such dispute, Respondents shall submit a Notice of Dispute in writing to the OSC within 30 days after receipt of the bill. Any such Notice of Dispute shall specifically identify the contested Response Costs and the basis for objection. If Respondents submit a Notice of Dispute, Respondents shall within the 30-day period, also as a requirement for initiating the dispute, (a) pay all uncontested Response Costs to EPA in the manner described in Paragraph 44, and (b) establish, in a duly chartered bank or trust company, an interest-bearing escrow account that is insured by the Federal Deposit Insurance Corporation (FDIC) and remit to that escrow account funds equivalent to the amount of the contested Response Costs. Respondents shall send to the OSC a copy of the transmittal letter and check paying the uncontested Response Costs, and a copy of the correspondence that establishes and funds the escrow account, including, but not limited to, information containing the identity of the bank and bank account under which the escrow account is established as well as a bank statement showing the initial balance of the escrow account. If EPA prevails in the dispute, within 5 days after the resolution of the dispute, Respondents shall pay the sums due (with accrued interest) to EPA in the manner described in Paragraph 44. If Respondents prevail concerning any aspect of the contested costs, Respondents shall pay that portion of the costs (plus associated accrued interest) for which they did not prevail to EPA in the manner described in Paragraph 44. Respondents shall be disbursed any balance of the escrow account. The dispute resolution procedures set forth in this Paragraph in conjunction with the procedures set forth in Section XV (Dispute Resolution) shall be the exclusive mechanisms for resolving disputes regarding Respondents' obligation to reimburse EPA for its Response Costs.

## **XV. DISPUTE RESOLUTION**

47. Unless otherwise expressly provided for in this Settlement, the dispute resolution procedures of this Section shall be the exclusive mechanism for resolving disputes arising under this Settlement. The Parties shall attempt to resolve any disagreements concerning this Settlement expeditiously and informally.

48. **Informal Dispute Resolution.** If Respondents object to any EPA action taken pursuant to this Settlement, including billings for Response Costs, they shall send EPA a written Notice of Dispute describing the objection(s) within five (5) days after such action. EPA and Respondents shall have five (5) days from EPA's receipt of Respondents' Notice of Dispute to resolve the dispute through informal negotiations (the "Negotiation Period"). The Negotiation Period may be extended at the sole discretion of EPA. Any agreement reached by the Parties pursuant to this Section shall be in writing and shall, upon signature by the Parties, be incorporated into and become an enforceable part of this Settlement.

49. **Formal Dispute Resolution.** If the Parties are unable to reach an agreement within the Negotiation Period, Respondents shall, within twenty (20) days after the end of the Negotiation Period, submit a statement of position to the OSC. EPA may, within twenty (20) days thereafter, submit a statement of position. Thereafter, an EPA management official at the branch level or higher will issue a written decision on the dispute to Respondents. EPA's decision shall be incorporated into and become an enforceable part of this Settlement. Respondents shall fulfill the requirement that was the subject of the dispute in accordance with the agreement reached or with EPA's decision, whichever occurs.

50. Except as provided in Paragraph 46 (Contesting Response Costs) or as agreed by EPA, the invocation of formal dispute resolution procedures under this Section does not extend, postpone, or affect in any way any obligation of Respondents under this Settlement. Except as provided in Paragraph 60, stipulated penalties with respect to the disputed matter shall continue to accrue, but payment shall be stayed pending resolution of the dispute. Notwithstanding the stay of payment, stipulated penalties shall accrue from the first day of noncompliance with any applicable provision of this Settlement. In the event that Respondents do not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section XVII (Stipulated Penalties).

## **XVI. FORCE MAJEURE**

51. "Force Majeure" for purposes of this Settlement, is defined as any event arising from causes beyond the control of Respondents, of any entity controlled by Respondents, or of Respondents' contractors that delays or prevents the performance of any obligation under this Settlement despite Respondents' best efforts to fulfill the obligation. The requirement that Respondents exercise "best efforts to fulfill the obligation" includes using best efforts to anticipate any potential force majeure and best efforts to address the effects of any potential force majeure (a) as it is occurring and (b) following the potential force majeure such that the delay and any adverse effects of the delay are minimized to the greatest extent possible. "Force majeure" does not include financial inability to complete the Work or increased cost of performance.

52. If any event occurs or has occurred that may delay the performance of any obligation under this Settlement for which Respondents intend or may intend to assert a claim of force majeure, Respondents shall notify EPA's OSC orally or, in his or her absence, the alternate EPA OSC, or, in the event both of EPA's designated representatives are unavailable, the Director of the Superfund Division, EPA Region 9, within twenty-four (24) hours of when Respondents first knew that the event might cause a delay. Within three (3) days thereafter, Respondents shall provide in writing to EPA an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; Respondents' rationale for attributing such delay to a force majeure; and a statement as to whether, in the opinion of Respondents, such event may cause or contribute to an endangerment to public health or welfare, or the environment. Respondents shall include with any notice all available documentation supporting their claim that the delay was attributable to a force majeure. Respondents shall be deemed to know of any circumstance of which Respondents, any entity controlled by Respondents, or Respondents' contractors knew or should have known. Failure to comply with the above requirements regarding an event shall preclude Respondents from asserting any claim of force majeure regarding that event, provided, however, that if EPA, despite the late or incomplete notice, is able to assess to its satisfaction whether the event is a force majeure under Paragraph 51 and whether Respondents have exercised their best efforts under Paragraph 51, EPA may, in its unreviewable discretion, excuse in writing Respondents' failure to submit timely or complete notices under this Paragraph.

53. If EPA agrees that the delay or anticipated delay is attributable to a force majeure, the time for performance of the obligations under this Settlement that are affected by the force majeure will be extended by EPA for such time as is necessary to complete those obligations. An extension of the time for performance of the obligations affected by the force majeure shall not, of itself, extend the time for performance of any other obligation. If EPA does not agree that the delay or anticipated delay has been or will be caused by a force majeure, EPA will notify Respondents in writing of its decision. If EPA agrees that the delay is attributable to a force majeure, EPA will notify Respondents in writing of the length of the extension, if any, for performance of the obligations affected by the force majeure.

54. If Respondents elect to invoke the dispute resolution procedures set forth in Section XV (Dispute Resolution), they shall do so no later than 15 days after receipt of EPA's notice. In any such proceeding, Respondents shall have the burden of demonstrating by a preponderance of the evidence that the delay or anticipated delay has been or will be caused by a force majeure, that the duration of the delay or the extension sought was or will be warranted under the circumstances, that best efforts were exercised to avoid and mitigate the effects of the delay, and that Respondents complied with the requirements of Paragraphs 51 and 52. If Respondents carry this burden, the delay at issue shall be deemed not to be a violation by Respondents of the affected obligation of this Settlement identified to EPA.

55. The failure by EPA to timely complete any obligation under the Settlement is not a violation of the Settlement, provided, however, that if such failure prevents Respondents from meeting one or more deadlines under the Settlement, Respondents may seek relief under this Section.

## **XVII. STIPULATED PENALTIES**

56. Respondents shall be liable to EPA for stipulated penalties in the amounts set forth in Paragraphs 57.a and 58 for failure to comply with the obligations specified in Paragraphs 57.b and 58, unless excused under Section XVI (Force Majeure). “Comply” as used in the previous sentence includes compliance by Respondents with all applicable requirements of this Settlement, within the deadlines established under this Settlement.

### **57. Stipulated Penalty Amounts – Work (Including Payments, Financial Assurance, Major Deliverables, and Other Milestones)**

a. The following stipulated penalties shall accrue per violation per day for any noncompliance identified in Paragraph 57.b:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$1,500	1st through 14th day
\$3,000	15th through 30th day
\$5,000	31st day and beyond

#### **b. Obligations**

(1) Payment of any amount due under Section XIV (Payment of Response Costs).

(2) Establishment and maintenance of financial assurance in accordance with Section XXIII (Financial Assurance).

(3) Establishment of an escrow account to hold any disputed Response Costs under Paragraph 46 (Contesting Response Costs).

(4) Implementation of the Removal Work Plan.

58. **Stipulated Penalty Amounts – Other Deliverables.** The following stipulated penalties shall accrue per violation per day for failure to submit timely or adequate deliverables pursuant to this Settlement, other than those specified in Paragraph 57.b:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$500	1st through 14th day
\$1,500	15th through 30th day
\$3,000	31st day and beyond

59. In the event that EPA assumes performance of a portion or all of the Work pursuant to Paragraph 70 (Work Takeover), Respondents shall be liable for a stipulated penalty in the amount of \$200,000. Stipulated penalties under this Paragraph are in addition to the remedies available to EPA under Paragraphs 70 (Work Takeover) and 93 (Access to Financial Assurance).



60. All penalties shall begin to accrue on the day after the complete performance is due or the day a violation occurs and shall continue to accrue through the final day of the correction of the noncompliance or completion of the activity. Penalties shall continue to accrue during any dispute resolution period, and shall be paid within 15 days after the agreement or the receipt of EPA's decision or order. However, stipulated penalties shall not accrue: (a) with respect to a deficient submission under Paragraph 20 (Work Plan and Implementation), during the period, if any, beginning on the 31st day after EPA's receipt of such submission until the date that EPA notifies Respondents of any deficiency; and (b) with respect to a decision by the EPA Management Official at the branch level or higher, under Paragraph 49 (Formal Dispute Resolution), during the period, if any, beginning on the 21<sup>st</sup> day after the Negotiation Period begins until the date that the EPA Management Official issues a final decision regarding such dispute. Nothing in this Settlement shall prevent the simultaneous accrual of separate penalties for separate violations of this Settlement.

61. Following EPA's determination that Respondents have failed to comply with a requirement of this Settlement, EPA may give Respondents written notification of the failure and describe the noncompliance. EPA may send Respondents a written demand for payment of the penalties. However, penalties shall accrue as provided in the preceding Paragraph regardless of whether EPA has notified Respondents of a violation.

62. All penalties accruing under this Section shall be due and payable to EPA within 30 days after Respondents' receipt from EPA of a demand for payment of the penalties, unless Respondents invoke the Dispute Resolution procedures under Section XV (Dispute Resolution) within the 30-day period. All payments to EPA under this Section shall indicate that the payment is for stipulated penalties and shall be made in accordance with Paragraph 44 (Payments for Response Costs).

63. If Respondents fail to pay stipulated penalties when due, Respondents shall pay Interest on the unpaid stipulated penalties as follows: (a) if Respondents have timely invoked dispute resolution such that the obligation to pay stipulated penalties has been stayed pending the outcome of dispute resolution, Interest shall accrue from the date stipulated penalties are due pursuant to Paragraph 60 until the date of payment; and (b) if Respondents fail to timely invoke dispute resolution, Interest shall accrue from the date of demand under Paragraph 62 until the date of payment. If Respondents fail to pay stipulated penalties and Interest when due, the United States may institute proceedings to collect the penalties and Interest.

64. The payment of penalties and Interest, if any, shall not alter in any way Respondents' obligation to complete the performance of the Work required under this Settlement.

65. Nothing in this Settlement shall be construed as prohibiting, altering, or in any way limiting the ability of EPA to seek any other remedies or sanctions available by virtue of Respondents' violation of this Settlement or of the statutes and regulations upon which it is based, including, but not limited to, penalties pursuant to Sections 106(b) and 122(l) of CERCLA, 42 U.S.C. §§ 9606(b) and 9622(l), and punitive damages pursuant to Section 107(c)(3) of CERCLA, 42 U.S.C. § 9607(c)(3), provided however, that EPA shall not seek civil penalties pursuant to Section 106(b) or Section 122(l) of CERCLA or punitive damages pursuant

to Section 107(c)(3) of CERCLA for any violation for which a stipulated penalty is provided in this Settlement, except in the case of a willful violation of this Settlement or in the event that EPA assumes performance of a portion or all of the Work pursuant to Paragraph 70 (Work Takeover).

66. Notwithstanding any other provision of this Section, EPA may, in its unreviewable discretion, waive any portion of stipulated penalties that have accrued pursuant to this Settlement.

### **XVIII. COVENANTS BY EPA**

67. Except as provided in Section XIX (Reservations of Rights by EPA), EPA covenants not to sue or to take administrative action against Respondents pursuant to Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606 and 9607(a), for the Work and Response Costs. These covenants shall take effect upon the Effective Date. These covenants are conditioned upon the complete and satisfactory performance by Respondents of their obligations under this Settlement. These covenants extend only to Respondents and do not extend to any other person.

### **XIX. RESERVATIONS OF RIGHTS BY EPA**

68. Except as specifically provided in this Settlement, nothing in this Settlement shall limit the power and authority of EPA or the United States to take, direct, or order all actions necessary to protect public health, welfare, or the environment or to prevent, abate, or minimize an actual or threatened release of hazardous substances, pollutants, or contaminants, or hazardous or solid waste on, at, or from the Site. Further, nothing in this Settlement shall prevent EPA from seeking legal or equitable relief to enforce the terms of this Settlement, from taking other legal or equitable action as it deems appropriate and necessary, or from requiring Respondents in the future to perform additional activities pursuant to CERCLA or any other applicable law.

69. The covenants set forth in Section XVIII (Covenants by EPA) do not pertain to any matters other than those expressly identified therein. EPA reserves, and this Settlement is without prejudice to, all rights against Respondents with respect to all other matters, including, but not limited to:

- a. liability for failure by Respondents to meet a requirement of this Settlement;
- b. liability for costs not included within the definition of Response Costs;
- c. liability for performance of response action other than the Work;
- d. criminal liability;
- e. liability for violations of federal or state law that occur during or after implementation of the Work;

f. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments;

g. liability arising from the past, present, or future disposal, release or threat of release of Waste Materials outside of the Site; and

h. liability for costs incurred or to be incurred by the Agency for Toxic Substances and Disease Registry related to the Site not paid as Response Costs under this Settlement.

#### **70. Work Takeover**

a. In the event EPA determines that Respondents: (1) have ceased implementation of any portion of the Work; (2) are seriously or repeatedly deficient or late in their performance of the Work; or (3) are implementing the Work in a manner that may cause an endangerment to human health or the environment, EPA may issue a written notice (“Work Takeover Notice”) to Respondents. Any Work Takeover Notice issued by EPA (which writing may be electronic) will specify the grounds upon which such notice was issued and will provide Respondents a period of 3 days within which to remedy the circumstances giving rise to EPA’s issuance of such notice.

b. If, after expiration of the 3-day notice period specified in Paragraph 70.a, Respondents have not remedied to EPA’s satisfaction the circumstances giving rise to EPA’s issuance of the relevant Work Takeover Notice, EPA may at any time thereafter assume the performance of all or any portion(s) of the Work as EPA deems necessary (“Work Takeover”). EPA will notify Respondents in writing (which writing may be electronic) if EPA determines that implementation of a Work Takeover is warranted under this Paragraph 70.b. Funding of Work Takeover costs is addressed under Paragraph 93 (Access to Financial Assurance).

c. Respondents may invoke the procedures set forth in Paragraph 49 (Formal Dispute Resolution) to dispute EPA’s implementation of a Work Takeover under Paragraph 70.b. However, notwithstanding Respondents’ invocation of such dispute resolution procedures, and during the pendency of any such dispute, EPA may in its sole discretion commence and continue a Work Takeover under Paragraph 70.b until the earlier of (1) the date that Respondents remedy, to EPA’s satisfaction, the circumstances giving rise to EPA’s issuance of the relevant Work Takeover Notice, or (2) the date that a written decision terminating such Work Takeover is rendered in accordance with Paragraph 49 (Formal Dispute Resolution).

d. Notwithstanding any other provision of this Settlement, EPA retains all authority and reserves all rights to take any and all response actions authorized by law.

### **XX. COVENANTS BY RESPONDENTS**

71. Respondents covenant not to sue and agree not to assert any claims or causes of action against the United States, or its contractors or employees, with respect to the Work, Response Costs, and this Settlement, including, but not limited to:

a. any direct or indirect claim for reimbursement from the EPA Hazardous Substance Superfund through Sections 106(b)(2), 107, 111, 112, or 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law;

b. any claims under Sections 107 and 113 of CERCLA, Section 7002(a) of RCRA, 42 U.S.C. § 6972(a), or state law regarding the Work, Response Costs, and this Settlement;

c. any claim arising out of response actions at or in connection with the Site, including any claim under the United States Constitution, the Constitution of the State of California, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, or at common law; or

72. Except as provided in Paragraph 75 (Waiver of Claims by Respondents), these covenants not to sue shall not apply in the event the United States brings a cause of action or issues an order pursuant to any of the reservations set forth in Section XIX (Reservations of Rights by EPA), other than in Paragraph 69.a (liability for failure to meet a requirement of the Settlement), 69.d (criminal liability), or 69.e (violations of federal/state law during or after implementation of the Work), but only to the extent that Respondents' claims arise from the same response action, response costs, or damages that the United States is seeking pursuant to the applicable reservation.

73. Nothing in this Settlement shall be deemed to constitute approval or preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. § 300.700(d).

74. Respondents reserve, and this Settlement is without prejudice to, claims against the United States, subject to the provisions of Chapter 171 of Title 28 of the United States Code, and brought pursuant to any statute other than CERCLA or RCRA and for which the waiver of sovereign immunity is found in a statute other than CERCLA or RCRA, for money damages for injury or loss of property or personal injury or death caused by the negligent or wrongful act or omission of any employee of the United States, as that term is defined in 28 U.S.C. § 2671, while acting within the scope of his or her office or employment under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred. However, the foregoing shall not include any claim based on EPA's selection of response actions, or the oversight or approval of Respondents' deliverables or activities.

#### 75. **Waiver of Claims by Respondents**

a. Respondents agree not to assert any claims and to waive all claims or causes of action (including but not limited to claims or causes of action under Sections 107(a) and 113 of CERCLA) that they may have for the matters described in subparagraphs 75.a(1) and 75.a(2):

(1) **De Micromis Waiver.** For all matters relating to the Site against any person where the person's liability to Respondents with respect to the Site is based solely on having arranged for disposal or treatment, or for transport for

disposal or treatment, of hazardous substances at the Site, or having accepted for transport for disposal or treatment of hazardous substances at the Site, if all or part of the disposal, treatment, or transport occurred before April 1, 2001, and the total amount of material containing hazardous substances contributed by such person to the Site was less than 110 gallons of liquid materials or 200 pounds of solid materials; and

(2) **MSW Waiver.** For all matters relating to the Site against any person where the person's liability to Respondents with respect to the Site is based solely on having arranged for disposal or treatment, or for transport for disposal or treatment, of MSW at the Site, if the volume of MSW disposed, treated, or transported by such person to the Site did not exceed 0.2 percent of the total volume of waste at the Site.

b. **Exceptions to Waivers**

(1) The waivers under this Paragraph 75 shall not apply with respect to any defense, claim, or cause of action that a Respondent may have against any person otherwise covered by such waivers if such person asserts a claim or cause of action relating to the Site against such Respondent.

(2) The waivers under this Paragraph 75 shall not apply to Respondents' contractual indemnification claim against Dynamic Plating, Jesus Perez, and Moises Perez.

(3) The waiver under Paragraph 75.a(1) (De Micromis Waiver) shall not apply to any claim or cause of action against any person otherwise covered by such waiver if EPA determines that: (i) the materials containing hazardous substances contributed to the Site by such person contributed significantly or could contribute significantly, either individually or in the aggregate, to the cost of the response action or natural resource restoration at the Site; or (ii) such person has failed to comply with any information request or administrative subpoena issued pursuant to Section 104(e) or 122(e) of CERCLA, 42 U.S.C. § 9604(e) or 9622(e), or Section 3007 of RCRA, 42 U.S.C. § 6927, or has impeded or is impeding, through action or inaction, the performance of a response action or natural resource restoration with respect to the Site; or (iii) such person has been convicted of a criminal violation for the conduct to which the waiver would apply and that conviction has not been vitiated on appeal or otherwise.

(4) The waiver under Paragraph 75.a(2) (MSW Waiver) shall not apply to any claim or cause of action against any person otherwise covered by such waiver if EPA determines that: (i) the materials containing hazardous substances contributed to the Site by such person contributed significantly or could contribute significantly, either individually or in the aggregate, to the cost of the response action or natural resource restoration at the Site; or (ii) such person has failed to comply with any information request or administrative

subpoena issued pursuant to Section 104(e) or 122(e) of CERCLA, 42 U.S.C. § 9604(e) or 9622(e), or Section 3007 of RCRA, 42 U.S.C. § 6927, or has impeded or is impeding, through action or inaction, the performance of a response action or natural resource restoration with respect to the Site.

## **XXI. OTHER CLAIMS**

76. By issuance of this Settlement, the United States and EPA assume no liability for injuries or damages to persons or property resulting from any acts or omissions of Respondents. The United States or EPA shall not be deemed a party to any contract entered into by Respondents or their directors, officers, employees, agents, successors, representatives, assigns, contractors, or consultants in carrying out actions pursuant to this Settlement.

77. Except as expressly provided in Paragraphs 75 (Waiver of Claims by Respondents) and Section XVIII (Covenants by EPA), nothing in this Settlement constitutes a satisfaction of or release from any claim or cause of action against Respondents or any person not a party to this Settlement, for any liability such person may have under CERCLA, other statutes, or common law, including but not limited to any claims of the United States for costs, damages, and interest under Sections 106 and 107 of CERCLA, 42 U.S.C. §§ 9606 and 9607.

78. No action or decision by EPA pursuant to this Settlement shall give rise to any right to judicial review, except as set forth in Section 113(h) of CERCLA, 42 U.S.C. § 9613(h).

## **XXII. EFFECT OF SETTLEMENT/CONTRIBUTION**

79. Except as provided in Paragraphs 75 (Waiver of Claims by Respondents), nothing in this Settlement shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Settlement. Except as provided in Section XX (Covenants by Respondents), each of the Parties expressly reserves any and all rights (including, but not limited to, pursuant to Section 113 of CERCLA, 42 U.S.C. § 9613), defenses, claims, demands, and causes of action which each Party may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a Party hereto. Nothing in this Settlement diminishes the right of the United States, pursuant to Section 113(f)(2) and (3) of CERCLA, 42 U.S.C. § 9613(f)(2)-(3), to pursue any such persons to obtain additional response costs or response action and to enter into settlements that give rise to contribution protection pursuant to Section 113(f)(2).

80. The Parties agree that this Settlement constitutes an administrative settlement pursuant to which each Respondent has, as of the Effective Date, resolved liability to the United States within the meaning of Sections 113(f)(2) and 122(h)(4) of CERCLA, 42 U.S.C. §§ 9613(f)(2) and 9622(h)(4), and is entitled, as of the Effective Date, to protection from contribution actions or claims as provided by Sections 113(f)(2) and 122(h)(4) of CERCLA, or as may be otherwise provided by law, for the “matters addressed” in this Settlement. The “matters addressed” in this Settlement are the Work and Response Costs.

81. The Parties further agree that this Settlement constitutes an administrative settlement pursuant to which each Respondent has, as of the Effective Date, resolved liability to

the United States within the meaning of Section 113(f)(3)(B) of CERCLA, 42 U.S.C. § 9613(f)(3)(B).

82. Each Respondent shall, with respect to any suit or claim brought by it for matters related to this Settlement, notify EPA in writing no later than 60 days prior to the initiation of such suit or claim. Each Respondent also shall, with respect to any suit or claim brought against it for matters related to this Settlement, notify EPA in writing within 10 days after service of the complaint or claim upon it. In addition, each Respondent shall notify EPA within 10 days after service or receipt of any Motion for Summary Judgment and within 10 days after receipt of any order from a court setting a case for trial, for matters related to this Settlement.

83. In any subsequent administrative or judicial proceeding initiated by EPA, or by the United States on behalf of EPA, for injunctive relief, recovery of response costs, or other relief relating to the Site, Respondents shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised in the subsequent proceeding were or should have been brought in the instant case; provided, however, that nothing in this Paragraph affects the enforceability of the covenant by EPA set forth in Section XVIII (Covenants by EPA).

### **XXIII. INDEMNIFICATION**

84. The United States does not assume any liability by entering into this Settlement or by virtue of any designation of Respondents as EPA's authorized representatives under Section 104(e) of CERCLA, 42 U.S.C. § 9604(e), and 40 C.F.R. § 300.400(d)(3). Respondents shall indemnify, save, and hold harmless the United States, its officials, agents, employees, contractors, subcontractors, and representatives for or from any and all claims or causes of action arising from, or on account of, negligent or other wrongful acts or omissions of Respondents, their officers, directors, employees, agents, contractors, or subcontractors, and any persons acting on Respondents' behalf or under their control, in carrying out activities pursuant to this Settlement. Further, Respondents agree to pay the United States all costs it incurs, including but not limited to attorneys' fees and other expenses of litigation and settlement arising from, or on account of, claims made against the United States based on negligent or other wrongful acts or omissions of Respondents, their officers, directors, employees, agents, contractors, subcontractors, and any persons acting on their behalf or under their control, in carrying out activities pursuant to this Settlement. The United States shall not be held out as a party to any contract entered into by or on behalf of Respondents in carrying out activities pursuant to this Settlement. Neither Respondents nor any such contractor shall be considered an agent of the United States.

85. The United States shall give Respondents notice of any claim for which the United States plans to seek indemnification pursuant to this Section and shall consult with Respondents prior to settling such claim.

86. Respondents covenant not to sue and agree not to assert any claims or causes of action against the United States for damages or reimbursement or for set-off of any payments made or to be made to the United States, arising from or on account of any contract, agreement,

or arrangement between any one or more of Respondents and any person for performance of Work on or relating to the Site, including, but not limited to, claims on account of construction delays. In addition, Respondents shall indemnify and hold harmless the United States with respect to any and all claims for damages or reimbursement arising from or on account of any contract, agreement, or arrangement between any one or more of Respondents and any person for performance of Work on or relating to the Site, including, but not limited to, claims on account of construction delays.

#### **XXIV. INSURANCE**

87. No later than five (5) days before commencing any on-site Work, Respondents shall secure, and shall maintain until the first anniversary after issuance of Notice of Completion of Work pursuant to Section XXVIII (Notice of Completion of Work), commercial general liability insurance with limits of liability of \$1 million per occurrence, automobile liability insurance with limits of liability of \$1 million per accident, and umbrella liability insurance with limits of liability of \$5 million in excess of the required commercial general liability and automobile liability limits, naming EPA as an additional insured with respect to all liability arising out of the activities performed by or on behalf of Respondents pursuant to this Settlement. In addition, for the duration of the Settlement, Respondents shall provide EPA with certificates of such insurance and a copy of each insurance policy. Respondents shall resubmit such certificates and copies of policies each year on the anniversary of the Effective Date. In addition, for the duration of the Settlement, Respondents shall satisfy, or shall ensure that their contractors or subcontractors satisfy, all applicable laws and regulations regarding the provision of worker's compensation insurance for all persons performing the Work on behalf of Respondents in furtherance of this Settlement. If Respondents demonstrate by evidence satisfactory to EPA that any contractor or subcontractor maintains insurance equivalent to that described above, or insurance covering some or all of the same risks but in a lesser amount, Respondents need provide only that portion of the insurance described above that is not maintained by the contractor or subcontractor. Respondents shall ensure that all submittals to EPA under this Paragraph identify the Dynamic Plating Site, Upland, California and the EPA docket number for this action.

#### **XXV. FINANCIAL ASSURANCE**

88. In order to ensure completion of the Work, Respondents shall secure financial assurance, initially in the amount of \$500,000 ("Estimated Cost of the Work"), for the benefit of EPA. The financial assurance must be one or more of the mechanisms listed below, in a form substantially identical to the relevant sample documents available from EPA or under the "Financial Assurance - Settlements" category on the Cleanup Enforcement Model Language and Sample Documents Database at <https://cfpub.epa.gov/compliance/models/>, and satisfactory to EPA. Respondents may use multiple mechanisms if they are limited to surety bonds guaranteeing payment, letters of credit, trust funds, and/or insurance policies.

a. A surety bond guaranteeing payment and/or performance of the Work that is issued by a surety company among those listed as acceptable sureties on federal bonds as set forth in Circular 570 of the U.S. Department of the Treasury;



b. An irrevocable letter of credit, payable to or at the direction of EPA, that is issued by an entity that has the authority to issue letters of credit and whose letter-of-credit operations are regulated and examined by a federal or state agency;

c. A trust fund established for the benefit of EPA that is administered by a trustee that has the authority to act as a trustee and whose trust operations are regulated and examined by a federal or state agency;

d. A policy of insurance that provides EPA with acceptable rights as a beneficiary thereof and that is issued by an insurance carrier that has the authority to issue insurance policies in the applicable jurisdiction(s) and whose insurance operations are regulated and examined by a federal or state agency;

e. A demonstration by a Respondent that it meets the financial test criteria of Paragraph 90; or

f. A guarantee to fund or perform the Work executed in favor of EPA by a company: (1) that is a direct or indirect parent company of a Respondent or has a “substantial business relationship” (as defined in 40 C.F.R. § 264.141(h)) with a Respondent; and (2) can demonstrate to EPA’s satisfaction that it meets the financial test criteria of Paragraph 88.

89. Respondents shall, within 30 days after the Effective Date, obtain EPA’s approval of the form of Respondents’ financial assurance. Within 30 days of such approval, Respondents shall secure all executed and/or otherwise finalized mechanisms or other documents consistent with the EPA-approved form of financial assurance and shall submit such mechanisms and documents to Loren Henning, Action Section Chief of CERCLA Enforcement at EPA Region 9, at 75 Hawthorne, Mail Code SFD 7-5, San Francisco, CA 94105.

90. Respondents seeking to provide financial assurance by means of a demonstration or guarantee under Paragraph 88.e or 88.f must, within 30 days of the Effective Date:

a. Demonstrate that:

(1) the affected Respondent or guarantor has:

- i. Two of the following three ratios: a ratio of total liabilities to net worth less than 2.0; a ratio of the sum of net income plus depreciation, depletion, and amortization to total liabilities greater than 0.1; and a ratio of current assets to current liabilities greater than 1.5; and
- ii. Net working capital and tangible net worth each at least six times the sum of the Estimated Cost of the Work and the amounts, if any, of other federal, state, or tribal environmental obligations financially assured through the use of a financial test or guarantee; and
- iii. Tangible net worth of at least \$10 million; and

- iv. Assets located in the United States amounting to at least 90 percent of total assets or at least six times the sum of the Estimated Cost of the Work and the amounts, if any, of other federal, state, or tribal environmental obligations financially assured through the use of a financial test or guarantee; or

(2) The affected Respondent or guarantor has:

- i. A current rating for its senior unsecured debt of AAA, AA, A, or BBB as issued by Standard and Poor's or Aaa, Aa, A or Baa as issued by Moody's; and
- ii. Tangible net worth at least six times the sum of the Estimated Cost of the Work and the amounts, if any, of other federal, state, or tribal environmental obligations financially assured through the use of a financial test or guarantee; and
- iii. Tangible net worth of at least \$10 million; and
- iv. Assets located in the United States amounting to at least 90 percent of total assets or at least six times the sum of the Estimated Cost of the Work and the amounts, if any, of other federal, state, or tribal environmental obligations financially assured through the use of a financial test or guarantee; and

b. Submit to EPA for the affected Respondent or guarantor: (1) a copy of an independent certified public accountant's report of the entity's financial statements for the latest completed fiscal year, which must not express an adverse opinion or disclaimer of opinion; and (2) a letter from its chief financial officer and a report from an independent certified public accountant substantially identical to the sample letter and reports available from EPA or under the "Financial Assurance - Settlements" subject list category on the Cleanup Enforcement Model Language and Sample Documents Database at <https://cfpub.epa.gov/compliance/models/>.

91. Respondents providing financial assurance by means of a demonstration or guarantee under Paragraph 88.e or 88.f must also:

a. Annually resubmit the documents described in Paragraph 90.b within 90 days after the close of the affected Respondent's or guarantor's fiscal year;

b. Notify EPA within 30 days after the affected Respondent or guarantor determines that it no longer satisfies the relevant financial test criteria and requirements set forth in this Section; and

c. Provide to EPA, within 30 days of EPA's request, reports of the financial condition of the affected Respondent or guarantor in addition to those specified in Paragraph

90.b; EPA may make such a request at any time based on a belief that the affected Respondent or guarantor may no longer meet the financial test requirements of this Section.

92. Respondents shall diligently monitor the adequacy of the financial assurance. If any Respondent becomes aware of any information indicating that the financial assurance provided under this Section is inadequate or otherwise no longer satisfies the requirements of this Section, such Respondent shall notify EPA of such information within seven (7) days. If EPA determines that the financial assurance provided under this Section is inadequate or otherwise no longer satisfies the requirements of this Section, EPA will notify the affected Respondent of such determination. Respondents shall, within 30 days after notifying EPA or receiving notice from EPA under this Paragraph, secure and submit to EPA for approval a proposal for a revised or alternative financial assurance mechanism that satisfies the requirements of this Section. EPA may extend this deadline for such time as is reasonably necessary for the affected Respondent, in the exercise of due diligence, to secure and submit to EPA a proposal for a revised or alternative financial assurance mechanism, not to exceed sixty (60) days. Respondents shall follow the procedures of Paragraph 94 (Modification of Amount, Form, or Terms of Financial Assurance) in seeking approval of, and submitting documentation for, the revised or alternative financial assurance mechanism. Respondents' inability to secure financial assurance in accordance with this Section does not excuse performance of any other obligation under this Settlement.

**93. Access to Financial Assurance**

a. If EPA issues a notice of implementation of a Work Takeover under Paragraph 70.b, then, in accordance with any applicable financial assurance mechanism, EPA is entitled to: (1) the performance of the Work; and/or (2) require that any funds guaranteed be paid in accordance with Paragraph 93.d.

b. If EPA is notified by the issuer of a financial assurance mechanism that it intends to cancel the mechanism, and the affected Respondent fails to provide an alternative financial assurance mechanism in accordance with this Section at least 30 days prior to the cancellation date, the funds guaranteed under such mechanism must be paid prior to cancellation in accordance with Paragraph 93.d.

c. If, upon issuance of a notice of implementation of a Work Takeover under Paragraph 70.b, either: (1) EPA is unable for any reason to promptly secure the resources guaranteed under any applicable financial assurance mechanism, whether in cash or in kind, to continue and complete the Work; or (2) the financial assurance is a demonstration or guarantee under Paragraph 88.e or 88.f, then EPA is entitled to demand an amount, as determined by EPA, sufficient to cover the cost of the remaining Work to be performed. Respondents shall, within fifteen (15) days of such demand, pay the amount demanded as directed by EPA.

d. Any amounts required to be paid under this Paragraph 93 shall be, as directed by EPA: (i) paid to EPA in order to facilitate the completion of the Work by EPA or by another person; or (ii) deposited into an interest-bearing account, established at a duly chartered bank or trust company that is insured by the FDIC, in order to facilitate the completion of the Work by another person. If payment is made to EPA, EPA may deposit the payment into the EPA Hazardous Substance Superfund or into the Dynamic Plating Special Account within the

EPA Hazardous Substance Superfund to be retained and used to conduct or finance response actions at or in connection with the Site, or to be transferred by EPA to the EPA Hazardous Substance Superfund.

e. All EPA Work Takeover costs not paid under this Paragraph 93 must be reimbursed as Response Costs under Section XIV (Payments for Response Costs).

**94. Modification of Amount, Form, or Terms of Financial Assurance.**

Respondents may submit, on any anniversary of the Effective Date or at any other time agreed to by the Parties, a request to reduce the amount, or change the form or terms, of the financial assurance mechanism. Any such request must be submitted to EPA in accordance with Paragraph 89, and must include an estimate of the cost of the remaining Work, an explanation of the bases for the cost calculation, and a description of the proposed changes, if any, to the form or terms of the financial assurance. EPA will notify Respondents of its decision to approve or disapprove a requested reduction or change pursuant to this Paragraph. Respondents may reduce the amount of the financial assurance mechanism only in accordance with: (a) EPA's approval; or (b) if there is a dispute, the agreement or written decision resolving such dispute under Section XV (Dispute Resolution). Respondents may change the form or terms of the financial assurance mechanism only in accordance with EPA's approval. Any decision made by EPA on a request submitted under this Paragraph to change the form or terms of a financial assurance mechanism shall not be subject to challenge by Respondents pursuant to the dispute resolution provisions of this Settlement or in any other forum. Within 30 days after receipt of EPA's approval of, or the agreement or decision resolving a dispute relating to, the requested modifications pursuant to this Paragraph, Respondents shall submit to EPA documentation of the reduced, revised, or alternative financial assurance mechanism in accordance with Paragraph 89.

**95. Release, Cancellation, or Discontinuation of Financial Assurance.**

Respondents may release, cancel, or discontinue any financial assurance provided under this Section only: (a) if EPA issues a Notice of Completion of Work under Section XXVIII (Notice of Completion of Work); (b) in accordance with EPA's approval of such release, cancellation, or discontinuation; or (c) if there is a dispute regarding the release, cancellation, or discontinuance of any financial assurance, in accordance with the agreement or final decision resolving such dispute under Section XV (Dispute Resolution).

## **XXVI. MODIFICATION**

96. The OSC may modify any plan or schedule in writing or by oral direction. Any oral modification will be memorialized in writing by EPA promptly, but shall have as its effective date the date of the OSC's oral direction. Any other requirements of this Settlement may be modified in writing by mutual agreement of the parties.

97. If Respondents seek permission to deviate from any approved work plan or schedule, Respondents' Project Coordinator shall submit a written request to EPA for approval outlining the proposed modification and its basis. Respondents may not proceed with the requested deviation until receiving oral or written approval from the OSC pursuant to Paragraph 96.

98. No informal advice, guidance, suggestion, or comment by the OSC or other EPA representatives regarding any deliverable submitted by Respondents shall relieve Respondents of their obligation to obtain any formal approval required by this Settlement, or to comply with all requirements of this Settlement, unless it is formally modified.

## **XXVII. ADDITIONAL REMOVAL ACTION**

99. If EPA determines that additional removal actions not included in the Removal Work Plan or other approved plan(s) are necessary to protect public health, welfare, or the environment, EPA will notify Respondents of that determination. Unless otherwise stated by EPA, within 30 days after receipt of notice from EPA that additional removal actions are necessary to protect public health, welfare, or the environment, Respondents shall submit for approval by EPA a work plan for the additional removal actions. The plan shall conform to the applicable requirements of Section VIII (Work to Be Performed) of this Settlement. Upon EPA's approval of the plan pursuant to Paragraph 20 (Work Plan and Implementation), Respondents shall implement the plan for additional removal actions in accordance with the provisions and schedule contained therein. This Section does not alter or diminish the OSC's authority to make oral modifications to any plan or schedule pursuant to Section XXVI (Modification).

## **XXVIII. NOTICE OF COMPLETION OF WORK**

100. When EPA determines, after EPA's review of the Final Report, that all Work has been fully performed in accordance with this Settlement, with the exception of any continuing obligations required by this Settlement, including payment of Response Costs and record retention, EPA will provide written notice to Respondents. If EPA determines that such Work has not been completed in accordance with this Settlement, EPA will notify Respondents, provide a list of the deficiencies, and require that Respondents modify the Removal Work Plan if appropriate in order to correct such deficiencies. Respondents shall implement the modified and approved Removal Work Plan and shall submit a modified Final Report in accordance with the EPA notice. Failure by Respondents to implement the approved modified Removal Work Plan shall be a violation of this Settlement.

## **XXIX. INTEGRATION/APPENDICES**

101. This Settlement and its appendices constitute the final, complete, and exclusive agreement and understanding among the Parties with respect to the settlement embodied in this Settlement. The parties acknowledge that there are no representations, agreements, or understandings relating to the settlement other than those expressly contained in this Settlement. The following appendices are attached to and incorporated into this Settlement:

- a. "Appendix A" is the Action Memorandum.
- b. "Appendix B" is the description and/or map of the Site.

## **XXX. EFFECTIVE DATE**

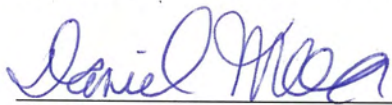
102. This Settlement shall be effective immediately after the Settlement is signed by the Assistant Director of the Superfund Division.

IT IS SO AGREED AND ORDERED:

U.S. ENVIRONMENTAL PROTECTION AGENCY:

4-26-2018

Dated



\_\_\_\_\_  
Daniel Meer, Assistant Director  
Superfund Division, Region 9

Signature Page for Settlement Regarding Dynamic Plating Removal Site  
**FOR DONALD M. PATTISON**

4/16/18 Donald M. Pattison  
Dated Donald M. Pattison

Signature Page for Settlement Regarding Dynamic Plating Removal Site  
**FOR BRIAN PATTISON:**

A handwritten signature in black ink, reading "Brian L. Pattison". The signature is written in a cursive style with a horizontal line extending from the end.

April 17, 2018  
Dated

\_\_\_\_\_  
Brian Pattison



Signature Page for Settlement Regarding Dynamic Plating Removal Site  
**FOR AUDREY JAMES**

4/16/2018

Dated

*Audrey James*

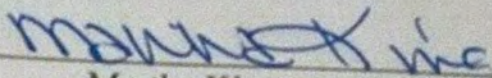
Audrey James



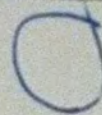
Signature Page for Settlement Regarding Dynamic Plating Removal Site  
**FOR MARTHA KING**

4-17-19

Dated

A handwritten signature in blue ink, appearing to read 'Martha King', written over a horizontal line.

Martha King

A handwritten circle in blue ink, located below the signature line.

**Appendix A**

**Action Memorandum**

**March 29, 2018**





**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION IX**

75 Hawthorne Street  
San Francisco, CA 94105

**MEMORANDUM**

**DATE:** MAR 30 2018

**SUBJECT:** Request for a Time-Critical Removal Action at Dynamic X Metals Plating, Upland, CA

**FROM:** Robert Wise, On-Scene Coordinator  
Emergency Response Section (SFD-9-2)

**TO:** Enrique Manzanilla, Director  
Superfund Division

**THROUGH:** Harry Allen, Chief  
Emergency Response Section (SFD-9-2)

**I. PURPOSE**

The purpose of this Action Memorandum is to obtain approval to spend up to \$1,375,200 in direct extramural costs to mitigate threats to human health and the environment posed by uncontrolled hazardous substances (chromium, cadmium, lead, nickel, zinc, copper, cyanide, halogenated solvents, acids, bases and oxidizers) known as the Dynamic X Metals Superfund Removal Site (the "Site").

The Site is located at 952 W. 9<sup>th</sup> Street, Upland, San Bernardino County, California, 91786. The removal of hazardous substances would be accomplished pursuant to Section 104(a)(1) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), 42 U.S.C. § 9604(a)(1), and Section 300.415 of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), 40 CFR 300.415.

**II. SITE CONDITIONS AND BACKGROUND**

Site Status: Non-NPL  
Category of Removal: Time-Critical  
CERCLIS ID: CAN000904210  
SITE ID: A9BM

## **A. Site Description**

### **1. Physical location**

The Site is located at 952 W. 9<sup>th</sup> Street, Upland, San Bernardino County, California 91786. The Site is in an industrial park. The Site is located to the north of 8<sup>th</sup> street and to the south of Arrow Route. The assessor's parcel number is 1007-551-05. In addition to the Site, the parcel also contains 954/956, 958 and 960 W. 9<sup>th</sup> Street. The building addressed as 954/956 W. 9<sup>th</sup> Street was originally part of Dynamic X-Metals Plating, but is now a separate polishing business. The other business in the industrial park include a flooring store directly to the east, a granite manufacturing and furniture shop to the west and a polishing shop to the south. The north side of the property is bordered by 9<sup>th</sup> Street. The closest residential community is approximately 0.1 miles to the south and to the north east. The Site location is documented in Attachment A: Figure 1: Site Location.

### **2. Site characteristics**

Dynamic Plating began its occupancy of the Site in 1999, where metal plating operations had been conducted on-site since 1965. The Site consists of a 3,000-square foot frame-and-stucco factory building with an attached paved and fenced external yard containing the waste water treatment system. The building contains eight plating lines with a total of 68 tanks ranging from 30 gallons to over 750 gallons. Adjacent to the main structure is an approximately 400 square foot cinderblock building used for polishing. According to a 2006 Phase 1 Assessment, the plating shop was located at 952 W. 9<sup>th</sup> Street, the 954 W. 9<sup>th</sup> Street location formerly served as the administrative offices for Dynamic Plating, and the 956 W. 9<sup>th</sup> Street location was the polishing operation for Dynamic Plating.

### **3. Removal site evaluation**

On October 18, 2017, the San Bernardino County District Attorney's Office (SBCoDA) served a search warrant on-site. The search warrant documented the presence of characteristic and listed hazardous wastes pursuant to the Resource Conservation and Recovery Act (RCRA). Tetrachloroethene, cadmium, chromium and lead were documented above the RCRA Toxicity Characteristic and the RCRA corrosivity characteristic (pH less than 2.0). The sampling documented the presence of RCRA cyanide listed waste (F-listed) in solution in numerous vats, and on the floor as solids. Sampling also documented the presence of California hazardous wastes including copper, nickel, cadmium, lead and zinc. The data are summarized in Attachment B: Table 1: DTSC Search Warrant Data. The data package is in the Administrative Record.

On December 27, 2017, the San Bernardino Co. Fire Department (SBCoFD) referred the Site to the EPA. The referral form can be found in the Administrative Record. On January 22, 2018, the START began an assessment of the Site which included the collection of samples from every container, tank, vat or drum on-site, and field hazard categorization of the samples. The assessment also identified eight plating lines inside the main structure, and a waste water treatment system located in the yard. The START dataset is found in Attachment C: START Field Hazard Categorization Data.

**4. Release or threatened release into the environment of a hazardous substance, or pollutant or contaminant**

Chromium, cadmium, lead, and halogenated solvents are RCRA listed and characteristic wastes; oxidizers and corrosives are RCRA characteristic wastes; and cyanide is a RCRA listed waste. All the contaminants of concern listed above are hazardous substances as defined by Section 101(14) of CERCLA. Listed CERCLA Hazardous Substances (copper, nickel and zinc), pursuant to Table 302.4 under 40 CFR 302, are also present. Additional hazardous substances or pollutants and contaminants, not discovered to date or not specifically identified herein, may exist at the Site. These substances pose a threat to human health and the environment.

**5. National Priorities List (“NPL”) status**

The Site is not currently on or proposed for inclusion on the NPL.

**B. Other Actions to Date**

On August 30, 2012, EPA and the SBCoFD conducted an unannounced hazardous waste management compliance evaluation inspection of the Dynamic Plating X-Metals facility. The purpose of the inspection was to determine Dynamic’s compliance with applicable Federal environmental statutes and regulations; the RCRA, as amended; the regulations provided in the CFR Chapter 40, Parts 261-265, 268,273, and 279, the California Code of Regulations, Title 22, Division 4.5, and the California Health and Safety Code, Division 20. The inspection documented 7 potential RCRA violations and 1 California violation. EPA issued a Notice of Violation (NOV) to Dynamic Plating on June 14, 2013.

On August 11, 2014 and October 6, 2014, EPA and SBCoFD returned to Dynamic Plating to conduct followup inspections and Dynamic’s October 7, 2013 and February 10, 2014 responses to the NOV. These subsequent inspections documented a total of 14 RCRA and Title 22 violations at the facility. EPA referred the Site back to California Department of Toxic Substance Control (DTSC) for followup. There was no further EPA involvement until SBCoFD referred the Site to EPA for cleanup.

**C. State and Local Authorities’ Roles**

## **1. State and local actions to date**

On November 9, 2016, the SBCoFD conducted a hazardous waste management inspection of the facility. At that time, numerous Federal and California hazardous waste violations were documented. Data collected during that inspection documented the presence of uncontrolled hazardous waste stored haphazardly. The data are attached in Attachment B: Table 2: SBCoFD Inspection Data.

On October 18, 2017, the SBCoDA, in cooperation with the DTSC, Santa Ana Regional Water Quality Control Board (RWQCB), City of Upland Code Enforcement and the SBCoFD, conducted a search warrant at the site. Code Enforcement issued a "Red Tag" on the facility shutting down all operations based on the structural damage to the facility's steel superstructure due to the corrosive atmosphere in the building. Fifteen samples were collected during the search warrant, documenting the presence of RCRA characteristic and listed hazardous waste.

## **2. Potential for Continued State/Local Response**

The DTSC Emergency Response Section declined to participate in this response due to Thomas Fire recovery operational commitments and the costs associated with this removal. The SBCoFD does not have the financial resources to conduct this cleanup. The RWQCB and DTSC expect to handle any longer-term groundwater issues at the Site.

## **III. THREATS TO PUBLIC HEALTH OR WELFARE OR THE ENVIRONMENT, AND STATUTORY AND REGULATORY AUTHORITIES**

Conditions at the Site represent a release, and potential threat of release, of a CERCLA hazardous substance threatening to public health, or welfare, or the environment based on the factors set forth in the NCP, 40 CFR 300.415(b)(2). These factors include:

### **1. Actual or potential exposure to nearby human populations, animals, or the food chain from hazardous substances or pollutants or contaminants**

The plating lines inside the facility are not secure and exposure to members of the public would result from unauthorized entry. The external yard of the facility is open to the atmosphere and subject to flooding during rain events. Hazardous substances uncovered in the yard may contribute to exposure to members of the public in surrounding business. Although there is some fencing around the Site, it is not fully enclosed and an encampment of homeless persons was starting to form nearby in March. Data from DTSC's search warrant indicate the presence of halogenated solvents, heavy metals and cyanides all of which are categorically hazardous waste.

**Tetrachloroethene ("PCE")** High concentrations of PCE can cause dizziness, headache, sleepiness, confusion, nausea, difficulty in speaking and walking, unconsciousness, and death. The Department of Health and Human Services (DHHS) has determined that PCE may reasonably be anticipated to be a carcinogen.

**Cadmium** is a heavy metal used in metal plating. Under acidic conditions, cadmium has the potential to leach from soils to water. It is a carcinogen and teratogen that has been associated with sub lethal effects on reproduction at low environmental concentrations. Exposures typically occur through inhalation and ingestion. Cadmium bioaccumulates and targets the kidneys, respiratory system and circulatory system, and prostate. Acute exposure to cadmium can cause harmful effects to the gastrointestinal system. Chronic exposure can cause harmful effects to the lungs, kidneys, and possibly lung and prostate cancer. The DHHS has determined that cadmium and cadmium compounds may reasonably be anticipated to be carcinogens.

**Chromium** is a heavy metal. Acute exposure to chromium can cause harmful effects on the nervous system, gastrointestinal system, kidneys, and circulatory system. Chronic exposure to low levels can cause damage to the central nervous system, kidneys, blood, gastrointestinal tract, and gingival tissues.

**Hexavalent chromium** can cause irritation to the nose, such as runny nose, nosebleeds, and ulcers and holes in the nasal septum. Ingesting large amounts of hexavalent chromium can cause stomach upsets and ulcers, convulsions, kidney and liver damage, and even death. Skin contact with certain chromium compounds can cause skin ulcers. EPA, the World Health Organization and DHHS have determined that hexavalent chromium is a human carcinogen.

**Copper** Breathing high levels of copper can cause irritation of nose and throat. Ingesting high levels of copper can cause nausea, vomiting, and diarrhea. Very-high doses of copper can cause damage to the liver and kidneys, and even death.

**Lead** is a toxic heavy metal. Exposure to lead can affect almost every organ and system in the body. Chronic exposure may cause weakness in fingers, wrists, or ankles. Lead exposure also causes small increases in blood pressure, particularly in middle-aged and older people and can cause anemia. Exposure to high lead levels can severely damage the brain and kidneys in adults or children and ultimately cause death. In pregnant women, high levels of exposure to lead may cause miscarriage. Children are more vulnerable to lead poisoning than adults. A child who swallows large amounts of lead may develop blood anemia, severe stomachache, muscle weakness, and brain damage. At low levels of exposure, lead can affect a child's mental and physical growth. EPA and DHHS have determined that lead and lead compounds are reasonably anticipated to be human carcinogens. The International Agency for Research on Cancer has determined that inorganic lead is probably carcinogenic to humans.



**Nickel** Exposures to nickel typically occur through inhalation, ingestion and direct contact. Exposure to nickel can result in sensitization dermatitis, allergic asthma and pneumonitis. The metal is a combustible solid. It is listed as a potential occupational carcinogen by NIOSH.

**Zinc** Inhalation of metal zinc fume can result in the exhibiting of throat dryness, cough, aches, chills, fever, nausea and vomiting. Exposure can also cause injury to mucous membranes and skin.

**Cyanide** is an acutely toxic substance, which generally binds with other chemicals to form compounds. When cyanide compounds react with acidic materials they form hydrogen cyanide. Hydrogen cyanide is a colorless gas with a faint, bitter, almond-like odor. Exposure to small amounts of cyanide can be deadly regardless of the route of exposure. The severity of the harmful effects depends in part on the form of cyanide, such as hydrogen cyanide gas or cyanide salts. Exposure to high levels of cyanide for even a short time harms the brain and heart and can even cause coma and death. The indications of cyanide poisoning are rapid, deep breathing and shortness of breath, followed by convulsions (seizures) and loss of consciousness.

**Sodium hydroxide** is a strongly alkaline material. Sodium hydroxide is corrosive and has an irritating effect on all body tissue, causing burns and deep ulcerations. Inhalation can cause damage to the upper respiratory tissue and lung tissue, with effects ranging from mucous membrane irritation to severe pneumonitis.

**Hydrochloric Acid** is a strong corrosive that can burn the skin, eyes and mucous membranes on dermal contact. It also is moderately irritating to the respiratory tract when inhaled. Hydrochloric acid produces toxic and corrosive vapors.

**Nitric acid** is a corrosive material that can burn the skin, eyes, and respiratory tract on direct contact or inhalation of vapors. It can cause acute pulmonary edema or chronic pulmonary diseases from inhalation. When heated, or reacted with water, it produces toxic and corrosive vapors.

**2. Hazardous substances or pollutants or contaminants in drums, barrels, tanks, or other bulk storage containers, that may pose a threat of release;**

The site contains many tanks, vats, drums and other small containers containing hazardous substances including heavy metals, corrosives, cyanides, oxidizers and solvents that are consistent with plating operations. Many of the containers are in poor condition and in threat of failing. The hazards associated with these contaminants of concern are described above.

**3. High levels of hazardous substances or pollutants or contaminants in soils largely at or near the surface, that may migrate**

In January 2007, a Phase II assessment was conducted by the land owner. A total of 11 soil borings were advanced inside of the plating building and around the perimeter of the Site, and samples were collected at one and five feet below ground surface. The analytical results documented the presence of tetrachloroethene, copper, zinc and lead in all 11 soil subsurface soil samples; chromium in seven of the borings, and nickel in eight of the soil borings. The data documented that these contaminants exceed the Region 9 Site Screening Levels and hazardous waste determining levels. The data are summarized in Attachment B: Table 3. The extent to which these concentrations have changed since 2007 will be evaluated during the soil assessment phase of the removal. For descriptions of the hazards associated with contaminants of concern see Section III.1.

**4. Weather conditions that may cause hazardous substances or pollutants or contaminants to migrate or be released**

The roof of the facility is open to the atmosphere through the skylights. During a rain event in January 2018, the secondary containment in the yard filled with contaminated rainwater and posed a threat of release off the Site. During the October 2017 search warrant, DTSC collected a sample in the secondary containment from beneath a water treatment tank in the yard. The sample analysis documented the presence of chromium copper, lead, nickel and zinc above California Hazardous Waste Levels and documented the presence of cyanide. For descriptions of the hazards associated with contaminants of concern see Section III.1.

**5. Threat of fire or explosion;**

The electrical system in this plating shop is substandard, the status of which contributed to the City of Upland Code Enforcement's decision to "Red Tag" the facility. Numerous containers were determined by field hazard categorization to be potentially flammable. If the facility was to catch on fire, hazardous substances would migrate off-site entrained in the smoke and through fire suppression runoff. Acids and bases on-site incompatible and could cause fire if they escape containment and mix, for example in storm water. In addition, any interaction between hydrochloric acid and cyanide salts may generate deadly hydrocyanic acid gas.

**6. Availability of other appropriate federal or state response mechanisms to respond to the release**

DTSC has limited funds to apply to addressing the human health and environmental concerns related to the hazardous substances at the site. EPA and DTSC plan to work cooperatively to ensure that the hazardous substances are properly disposed of and the threats mitigated.

**IV. ENDANGERMENT DETERMINATION**

The corrosive, toxic nature of the plating solutions present on the Site, the lack of structural integrity of the various vessels that contain these hazardous substances, and the lack of appropriate care and security for the facility present a significant threat of release or exposure. Actual or threatened releases of hazardous substances from this Site, if not addressed by the response action selected in this memorandum, may present an imminent and substantial endangerment to public health, welfare, or the environment.

## **V. PROPOSED ACTIONS AND ESTIMATED COSTS**

### **A. Proposed Actions**

#### **1. Proposed action description**

The EPA will conduct all or part of the removal action; however, we anticipate that the Potentially Responsible Party (PRP) may conduct some of these activities. A multi-phase removal is anticipated:

- Phase 1: Removal of hazardous substances, debris and plating equipment;
- Phase 2: Building and floor assessment;
- Phase 3: Demolition of all structures and foundations;
- Phase 4: Soil remediation (please note that the cost estimate does not include soil removal).

#### **2. Contribution to remedial performance**

EPA does not know what the long-term cleanup scope may be due to uncertainties with the subsurface soil contamination.

#### **The long-term cleanup plan for the Site:**

Final reporting of this removal action will be provided to the SBCoFD, RWQCB and DTSC for consideration in any further activities under state or county programs.

#### **Threats that will require attention prior to the start of a long-term cleanup:**

There is no EPA long-term cleanup planned for this Site. The immediate threats that have been identified in the Action Memorandum will be addressed by the proposed removal action. Long-term threats will be referred to the appropriate State agency.

#### **The extent to which the removal will ensure that threats are adequately abated:**

The removal of abandoned hazardous substances is expected to abate the immediate threats to public health and the environment from the Site.

Consistency with the long-term remedy:

As stated above, removal activities undertaken in this action will be considered and incorporated into state and county facility closure proceedings.

Post Removal Site Control

Post Removal Site Control needs will be determined following soil remediation.

**3. Applicable or relevant and appropriate requirements (“ARARs”)**

Section 300.415(j) of the NCP provides that removal actions must attain ARARs to the extent practicable, considering the exigencies of the situation.

Section 300.5 of the NCP defines applicable requirements as cleanup standards, standards of control, and other substantive environmental protection requirements, criteria or limitations promulgated under federal environmental or state environmental or facility siting laws that specifically address a hazardous substance, pollutant, contaminant, remedial action, location or other circumstances at a CERCLA site.

Section 300.5 of the NCP defines relevant and appropriate requirements as cleanup standards, standards of control and other substantive requirements, criteria, or limitations promulgated under federal environmental or state environmental or facility siting laws that, while not “applicable” to a hazardous substance, pollutant, or contaminant, remedial action, location, or other circumstances at a CERCLA site, address problems or situations sufficiently similar to those encountered at the CERCLA site and are well-suited to the particular Site.

Because CERCLA response actions do not require permitting, only substantive requirements are considered as possible ARARs. Administrative requirements such as approval of, or consultation with administrative bodies, issuance of permits, documentation, reporting, record keeping and enforcement are not ARARs for the CERCLA response actions proposed for the Site.

The following ARARs have been identified for the proposed response action, all of which are believed to be attainable.

Federal ARARs: Potential federal ARARs are the RCRA Land Disposal Restrictions, 40 CFR 268.40 Subpart D; the CERCLA Off-Site Disposal Restrictions, and the U.S. Department of Transportation of Hazardous Materials Regulations, 49 CFR Part 171, 172 and 173.

State ARARs: Potential state ARARs are Characteristics of Hazardous Waste implemented through the California Health and Safety Code, Title 22, § 66261.20, § 66261.21, § 66261.22, § 66261.23, and § 66261.24.

#### **4. Project schedule**

EPA's Office of Regional Counsel is in negotiations with the land owner's counsel to enter into an Administrative Order on Consent (AOC). The removal is expected to take six to eight weeks and will begin after the AOC has been signed.

#### **B. Estimated Costs**

##### Regional Removal Allowance Costs

Cleanup Contractor (ERRS)	\$ 1,100,000
START Contractor	\$ 276,000
Extramural Subtotal	\$ 1,376,000
Extramural Contingency (30%)	<u>\$ 275,200</u>

TOTAL, Removal Action Project Ceiling     \$ 1,375,200

#### **VI. EXPECTED CHANGE IN THE SITUATION SHOULD ACTION BE DELAYED OR NOT TAKEN**

Given the Site conditions, the nature of the hazardous substances documented on-Site and the potential exposure pathways to nearby populations described in Sections III and IV above, actual or threatened releases of hazardous substances from the Site, if not addressed by implementing the response actions selected in this Action Memorandum, present an imminent and substantial endangerment to public health, or welfare, or the environment.

#### **VII. ENFORCEMENT**

Please see the attached Confidential Enforcement Addendum for a discussion regarding PRPs and enforcement. In addition to the extramural costs estimated for the proposed action, a cost recovery enforcement action also may recover the following intramural costs:

##### Intramural Costs<sup>1</sup>

U.S. EPA Direct Costs	\$ 25,000
U.S. EPA Indirect Costs	

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<sup>1</sup> Direct costs include direct extramural costs and direct intramural costs. Indirect costs are calculated based on an estimated indirect cost rate expressed as a percentage of site-specific direct costs, consistent with the full cost accounting methodology effective October 2, 2000. These estimates do not include pre-judgment interest, do not take into account other enforcement costs, including Department of Justice costs, and may be adjusted during the course of a removal action. The estimates are for illustrative purposes only and their use is not intended to create any rights for responsible parties. Neither the lack of a total cost estimate nor deviation of actual costs from this estimate will affect the United States' right to cost recovery

(59.7% of \$1,400,200)      \$ 907,330

TOTAL Intramural Costs      \$ 835,919

The total EPA extramural and intramural costs for this removal action, based on full-cost accounting practices that will be eligible for cost recovery, are estimated to be \$2,211,119. Of this, an estimated \$1,375,200 comes from the Regional removal allowance.

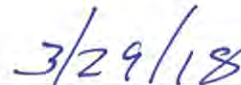
### **VIII. RECOMMENDATION**

This decision document represents the selected removal action for the Dynamic X Metals Plating Shop, Upland, CA, California, as developed in accordance with CERCLA as amended, and is not inconsistent with the NCP. This decision is based on the Administrative Record for the Site.

Because conditions at the Site meet the NCP criteria for a time-critical removal, I recommend that you concur on the determination of imminent and substantial endangerment and the removal action proposed in this Action Memorandum. The total removal action project ceiling if approved will be \$1,375,200. You may indicate your decision by signing below.

Approve:

  
Enrique Manzanilla, Director  
Superfund Division

  
Date

Enforcement Addendum

Index to the Administrative Record

Appendices

Attachment A: Figures

Attachment B: Tables

Attachment C: START Field Hazard Characterization Data

cc: Jean Schuman, USEPA, OEM, HQ

bcc: Site File

Craig Whitenack, EPA CI

Maddy Gallo, EPA ORC

Celeste Temple, SFD-9-4

**ENFORCEMENT CONFIDENTIAL ADDENDUM  
PRIVILEGED INFORMATION – DO NOT RELEASE**



## Index to the Administrative Record

1. START Report, Date TBD
2. Shallow Subsurface Soil Investigation, Dynamic Plating, Geo Point Technologies; January 30, 2007
3. DTSC Search Warrant Report
4. Phase 1 Environmental Assessment, Four Industrial Buildings, 952-960 W. 9th Street, Upland, CA; HEI Corp., November 30, 2006
5. 952 W. 9th Street, Upland Phase II Investigation Summary of Findings, WYR Engineering, June 23, 2017
6. SBCoFD November 9, 2016 Inspection Report
7. SBCoFD November 9, 2016 Inspection Analytical Data (A&R Laboratories)
8. SBCoFD August 30, 2012 Inspection Report
9. SBCoFD August 11, 2014 Inspection Report
10. SBCoFD November 9, 2010 Inspection Report
11. EPA RCRA Compliance Evaluation Inspection Reports, August and October, 2014
12. START Hazcat Data, January 2018
13. EPA RCRA Compliance Evaluation Inspection Report, November 15, 2012
14. Diagrams of Dynamic Plating dated 1999
15. Dynamic Plating Response to EPA Notice of Violations, October 7, 2013
16. Supporting documents from EPA file
17. Request for Federal Assistance, San Bernardino Co. Fire Department, December 27, 2017

## **Attachment A: Figures**



Figure 1: Site Location Map

## **Attachment B: Tables**

Table 1: DTSC Search Warrant Summary																	
Sample No./Analyte	DP-1	DP-2	DP-3	DP-4	DP-5	DP-6	DP-7	DP-8	DP-9	DP-10	DP-12	DP-13	DP-14	DP-15	Action Level	Region 9 Industrial Soil SSL (mg/kg)	Region 9 Risk based Protection of Groundwater Site Screening Level (mg/kg)
TCLP (mg/l)																	
Tetrachloroethylene	10.2															100	0.0051
Chloroform		75.8	49.9												6	1.4	0.000061
Cadmium		7.17	1.53			121							8.02	2.55	1	980	0.69
Chromium		32									7300	56.5	25.3	23.2	5	6.3	0.00067
Lead											268	9.02	12.3		5	800	
STLC (mg/l)																	
Copper	50.4	3920				150	2080	1460	2200	212		360	1700	114	25	47,000	28
Nickel	3860	2610	381	119	445	1300	1510	2880	1940	327	98200	777	2900	239	20	22,000	26
Cadmium		12.1	3.31			19.7				2.09			12.1	2.97	1	980	0.69
Lead		28.9	7.81			47.9	78.7	16.6	50	10.1	272	9.26	52.8		5	800	
Zinc		372	414	595	812		1310	392	1520		7390	371	580		250	350,000	370
TTLC (mg/kg)																	
Lead		1190				1020	4550	3370	1830	1050					1000	800	
Copper		85300	15700	14600	15800	3430	21300	20700	30300	4030		24300			2500	47,000	28
Nickel	65400	31900	5150	18600	18200	33400	22000	300000	28100	5200		47300	5890		2000	22,000	26
Cadmium		125				239						124			100	980	0.69
Chromium			6750	25500	17100		5170	28400	7520	11700	7520				2500	6.3	0.00067
Zinc			10900	14300	16700		13900	18900	28000			7230			5000	350,000	370
Other																	
pH	1.93	1.19									0.01	1.87			<2, >12.5		
Cyanide (mg/kg)	0.76	14.4	4.48	0.620		0.92	35.3	5.56	7.10	1.66	0.420	8.32		5.12		150	0.015

### Table 2: September 2016 Data

[illegible]



Table 3: Summary of 2007 Phase II Soil Results

Units: mg/kg								Units: mg/l			
Sample ID	Depth (feet bgs)	PCE	Total Cr	Cu	Ni	Zn	Pb	Total Cr	Cr (VI)	Cu	Ni
B1-1	1	0.194		23		91	12				
B2-1	1	0.662		14		61	5.4				
B3-1	1	2.3	47	34		147	28				
B4-1	1	2.61	969	738	403	266	63	18.3		52.8	27.5
B4-5	5	0.152	466	961	791	381	30				
B5-1	1	0.389		59	4.5	194	31				
B6-1	1	2.79	2140	37	13	183	29		19.4		
B6-5		0.755	267	38		84	11				
B7-1	1	1.58	644	33	1600	319	114				87.4
B7-5	5	0.037	511	59	1350	299	23				
B8-1	1	0.119		40	4.6	213	33				
B9-1	1	0.101		33	16	183	27				
B10-1	1	0.0456		33	6.4	115	17				
B11-1	1	2.54	1560	60		211	33		8.8		
B11-5	5	1.9		16	1500	65	5.2				
Region 9 Risk based Protection of Groundwater Site Screening Level (SSL)*		0.0051	0.00067	28	26	370					
Region 9 MCL based Protection of Groundwater Based SSL							14				
STLC								5	5	25	20
TCLP								5	5		

\*Total Cr SSL based on Cr(VI)  
 Greater than SSL action level  
 Greater than hazardous waste determining level

## **Attachment C: START Hazcat Data**



[illegible]

[illegible]

[illegible]

Container ID	Container Label	Material Volume	Container Volume	Container Type	HAZCAT Results							
					pH	Water Reactive	Cyanide	Oxidizer	Flammable	Explosive	Organo-halide	Category
DR001	No Label	7 Gal	25 Gal	Poly	0	N	N	Y	N	N	N	Strong Acid/Oxidizer
DR002	No Label	1 Gal	55 Gal	Poly	0	N	N	N	N	N	N	Fuming Nitric
DR003	Sulfuric	20 Gal	55 Gal	Poly	0	Y	N	Y	N	N	N	Water Reactive/Strong Acid
DR004	Muriatic	5 Gal	55 Gal	Poly	0	N	N	N	N	N	N	Strong Acid
DR005	Nickel Chloride	25 Gal	55 Gal	Poly	8	N	N	N	N	N	N	Neutral Liquid
DR006	No Label	12 Gal	25 Gal	Poly	7	N	N	N	N	N	N	Neutral Liquid
DR007	Metal Zincate	25 Gal	55 Gal	Poly	14	N	N	N	N	N	N	Base Liquid
DR008	Enova EF	5 Gal	15 Gal	Poly	13	N	N	N	N	N	N	Base Liquid
DR009	Enova EF	5 Gal	15 Gal	Poly	1	N	N	Y	N	N	N	Acid Liquid
DR010	Enova EF	15 Gal	15 Gal	Poly	11	N	N	N	N	N	N	Base Liquid
DR011	Water Tank Rinse	1 Gal	55 Gal	Poly	4	N	N	Y	N	N	Y	Neutral Liquid/Oxidizer/Organohalide
DR012	Corrosive	20 Gal	55 Gal	Poly	--	--	--	--	--	--	--	--
DR013	Muriatic Acid	55 Gal	55 Gal	Poly	0	N	N	Y	N	N	N	Strong Acid/Oxidizer
DR014	No Label	30 Gal	55 Gal	Poly	3	N	N	N	N	N	N	Neutral Liquid
DR015	Filtering Exchange Tank	20 Gal	55 Gal	Poly	0	N	N	Y	N	N	N	Strong Acid/Oxidizer
DR016	Water Tank Rinse	20 Gal	55 Gal	Poly	0	N	N	Y	N	N	Y	Strong Acid/Oxidizer/Organohalide
DR017	No Label	2 Gal	15 Gal	Poly	5	N	N	N	N	N	N	Neutral Liquid
DR018	No Label	25 Gal	55 Gal	Poly	1	N	N	Y	N	N	N	Strong Acid
DR019	DI Water	50 Gal	55 Gal	Poly	1	N	N	Y	N	N	N	Strong Acid/Oxidizer
DR020	Filtering Exchange Tank	20 Gal	55 Gal	Poly	3	N	N	Y	N	N	N	Acid/Oxidizer
DR021	Rinse	7 Gal	15 Gal	Poly	1	N	N	Y	N	N	N	Strong Acid/Oxidizer
DR022	Yellow Chromate	10 Gal	15 Gal	Poly	1	N	N	Y	N	N	N	Strong Acid/Oxidizer
DR023	Liquid Caustic Soda	10 Gal	55 Gal	Poly	0	N	N	Y	N	N	N	Strong Acid/Oxidizer
DR024	Corrosive	30 Gal	55 Gal	Poly	11	N	N	Y	N	N	N	Base/Oxidizer
DR025	No Label	50 Gal	55 Gal	Poly	7	N	N	Y	N	N	N	Neutral Solid/Oxidizer
DR026	Sulfuric	50 Gal	55 Gal	Poly	12	N	N	N	N	N	N	Strong Base
DR027	No Label	6 Gal	20 Gal	Poly	0	N	N	Y	N	N	N	Strong Acid Muriatic Acid
DR028	No Label	40 lbs	40 lbs	Fiber	14	N	N	N	N	N	N	Strong Base
Sump 2	Sump 2	--	--	Sump	4	N	N	Y	N	N	N	Oxidizer Liquid

Container ID	Container Label	Material Volume	Container Volume	Container Type	HAZCAT Results							
					pH	Water Reactive	Cyanide	Oxidizer	Flammable	Explosive	Organo-halide	Category
SC001	Sulfuric	1 Gal	5 Gal	Bucket	0	N	N	Y	N	N	N	Strong Acid/Oxidizer
SC002	Ameribrite Ni Brightener	3 Gal	5 Gal	Bucket	10	N	N	N	N	Y	N	Weak Base/Combustable
SC003	No Label	1.5 Gal	5 Gal	Bucket	0	N	N	Y	N	N	N	Strong Acid/Oxidizer
SC004	No Label	2 Gal	5 Gal	Cut Poly	0	N	N	N	N	N	N	Strong Acid
SC005	Zincate	5 Gal	5 Gal	Poly	14	N	N	N	N	N	N	Strong Base
SC006	Zincate	5 Gal	5 Gal	Poly	14	N	N	N	N	N	N	Strong Base
SC007	Zincate	5 Gal	5 Gal	Poly	13	N	N	N	N	N	N	Strong Base
SC008	Cubrac Marque	Residual	5 Gal	Poly	--	--	--	--	--	--	--	--
SC009	Deactivate Brightener	3 Gal	5 Gal	Poly	0	N	N	N	N	N	N	Strong Acid
SC010	Ameribrite Ni Brightener	2 Gal	5 Gal	Poly	1	N	N	N	N	N	N	Strong Acid
SC011	Ameribrite Ni Brightener	1 Gal	5 Gal	Poly	7	N	N	N	N	N	N	Neutral Liquid
SC012	Ameribrite Ni Brightener	1 Gal	5 Gal	Poly	5	N	N	N	N	N	N	Neutral Liquid
SC013	Ameribrite Ni Brightener	1 Gal	5 Gal	Poly	5	N	N	N	N	N	N	Neutral Liquid
SC014	Machirrib Nikland ELV	1 Gal	5 Gal	Poly	6	N	N	N	N	N	N	Neutral Liquid
SC015	Criterion SB-100 Leveler	5 Gal	5 Gal	Poly	6	N	N	N	N	N	N	Neutral Liquid
SC016	Criterion SB-2 Achiever	5 Gal	5 Gal	Poly	0	N	N	N	N	N	N	Strong Acid
SC017	Z-Trol	3 Gal	5 Gal	Poly	10	N	Y	N	N	N	N	Weak Base/Cyanide
SC018	Criterion SB-100 Leveler	5 Gal	5 Gal	Poly	1	N	N	N	N	N	N	Strong Acid
SC019	No Label	1 Gal	5 Gal	Poly	0	N	N	N	N	N	N	Strong Acid
SC020	No Label	5 Gal	6 Gal	Poly	1	N	N	N	N	N	N	Strong Acid
SC021	No Label	5 Gal	6 Gal	Poly	5	N	N	Y	N	N	N	Neutral Liquid/Weak Oxidizer
SC022	ZCI K3 Starter	3 Gal	5 Gal	Poly	0	N	N	N	N	N	N	Strong Acid
SC023	ZCI K3 Starter	3 Gal	5 Gal	Poly	5	N	N	N	N	N	N	Neutral Liquid
SC024	ZCI-Bright II	1 Gal	5 Gal	Poly	9	N	N	N	N	N	N	Neutral Liquid
SC025	Enova XL 008	5 Gal	5 Gal	Poly	11	N	N	N	N	N	N	Weak Liquid
SC026	Muriatic Acid	5 Gal	5 Gal	Bucket	0	N	N	Y	N	N	N	Strong Acid/Oxidizer Heavy Metals
SC027	No Label	3 Gal	5 Gal	Bucket	0	N	N	Y	N	N	N	Strong Acid/Oxidizer
SC028	No Label	0.5 Gal	5 Gal	Bucket	3 - 4	N	N	Y	N	N	N	Acid/Oxidizer
SC029	Enova EF 583 BR	3 Gal	5 Gal	Poly	5	Y	Y	Y	Y	Y	Y	Neutral Liquid/Possible Organohalide
SC030	Enova EF 583 BR	3 Gal	5 Gal	Poly	11	N	N	N	N	N	N	Base
SC031	Enova EF 583 CMPR	3 Gal	5 Gal	Poly	13	N	N	N	N	N	N	Strong Base
SC032	Crystal Level EV	3 Gal	5 Gal	Poly	5	N	N	N	N	N	N	Neutral Liquid
SC033	Crystal AP Address	3 Gal	5 Gal	Poly	4	N	N	N	N	N	N	Neutral Liquid
SC034	Enova EF 583 BR	3 Gal	5 Gal	Poly	5	N	N	N	N	N	N	Neutral Liquid
SC035	Enova EF 583 BR	3 Gal	5 Gal	Poly	5	N	N	N	N	N	N	Neutral Liquid
SC036	Corrosive	5 Gal	5 Gal	Poly	0	N	N	Y	N	N	N	Strong Acid/Oxidizer
SC037	Cuproplate Cu	1 Gal	5 Gal	Poly	77	N	N	N	N	N	N	Neutral Liquid
SC038	Polish Dust	2.5 Gal	5 Gal	Metal	--	--	Y	--	--	--	--	Cyanide Briquette
SC039	Ammonia	5 Gal	5 Gal	Poly	13	N	Y	N	N	N	N	Strong Base/Cyanide
SC040	Ammonia	5 Gal	5 Gal	Poly	13	N	N	N	N	N	N	Strong Base
SC041	Ammonia	5 Gal	5 Gal	Poly	12	N	N	N	N	N	N	Strong Base/Possible Ammonia
SC042	Ammonia	5 Gal	5 Gal	Poly	14	N	N	N	N	N	N	Strong Base/Possible Ammonia
SC043	No Label	2.5 Gal	2.5 Gal	Poly	0	N	N	Y	N	N	N	Strong Acid/Oxidizer
SC044	Mobil 1	1 Gal	2.5 Gal	Poly	Oil	N	N	N	Y	N	N	Oil Material

SC045	Cumac MT2	2.5 Gal	5 Gal	Poly	0	N	N	N	N	N	N	Strong Acid
SC046	OptiBond Deox NC	4 Gal	5 Gal	Poly	0	N	N	Y	N	N	N	Strong Acid/Oxidizer
SC047	Sirprep 209Zn	4 Gal	5 Gal	Poly	14	N	N	Y	N	N	N	Strong Base/Oxidizer
SC048	MC-TLS 20	2 Gal	5 Gal	Poly	0	N	N	Y	N	N	N	Strong Acid/Oxidizer
SC049	Flux	5 Gal	5 Gal	Poly	6	N	N	N	Y	N	Y	Neutral Liquid/Flammable/Organohalide
SC050	Fusing Flux	2 Gal	5 Gal	Bucket	0	N	N	N	Y	N	N	Strong Acid/Flammable
SC051	Fusing Flux	2 Gal	5 Gal	Bucket	0	N	N	N	Y	N	Y	Strong Acid/Flammable/Organohalide
SC052	Cubrac Marque	5 Gal	5 Gal	Poly	--	N	N	N	N	N	N	No pH (too dark); Liquid
SC053	CuMac Surnee	5 Gal	5 Gal	Poly	0	N	N	Y	N	N	N	Strong Acid/Oxidizer
SC054	Potassium Permanganate	40 lbs	Fiber	40 lbs								
SC055	Irritide	1 Gal	5 Gal	Bucket	7	N	N	N	N	N	N	Charcoal Material
SC056	Lusteron Chomate 66	3 Gal	5 Gal	Bucket	0	N	N	Y	N	N	N	Strong Acid/Oxidizer
SC057	Aluminescent Chem	4 Gal	5 Gal	Bucket	8	N	N	N	N	N	N	Neutral Liquid
SC058	Copper Gleam PC	2 Gal	5 Gal	Bucket	0	N	N	N	N	N	N	Strong Acid
SC059	No Label (Sodium Hydroxide)	3 Gal	3 Gal	Poly	0	N	N	Y	N	N	N	Strong Acid
SC060	Irridite 14-Z (Chromic Acid)	10 lbs	10lbs	Fiber	2	N	N	Y	N	N	N	Strong Acid
SC061	Potassium Chloride	3 Gal	5 Gal	Poly	2 - 3	N	N	Y	N	N	N	Solid Acid/Oxidizer
SC062	Liquid 300	4 Gal	5 Gal	Poly	8	N	N	Y	N	N	N	Neutral Liquid/Oxidizer
SC063	Ebonal Z	3 Gal	5 Gal	Poly	6	N	N	Y	N	N	N	Neutral Liquid/Oxidizer
SC064	Zinc Purifier	3 Gal	5 Gal	Poly	7	N	N	N	Y	N	N	Neutral Solid/Flammable
SC065	Monopotassium Phosphate	40 lbs	40 lbs	Fiber	5	N	N	N	N	N	N	Neutral Solid
SC066	No Label	40 lbs	40 lbs	Fiber	5	N	N	N	N	N	N	Neutral Solid/Sinks In Water
SC067	Acid Adjust Salt	40 lbs	40 lbs	Fiber	1	N	N	N	N	N	N	Strong Acid
SC068	Water	5 Gal	5 Gal	Poly	9	N	N	N	N	N	N	Neutral Liquid
SC069	Copromp M	5 Gal	5 Gal	Poly	11	N	N	N	N	N	N	Base Liquid
SC070	Pickel Liquid	5 Gal	5 Gal	Poly	0	N	N	Y	N	N	N	Strong Acid/Oxidizer
SC071	PAV Chrome	5 Gal	5 Gal	Poly	7	N	N	N	N	N	N	Neutral Liquid
SC072	PAV Chrome	5 Gal	5 Gal	Poly	5	N	N	N	N	N	N	Neutral Liquid
SC073	Lusto Floc	40 lbs	40 lbs	Fiber	7	N	N	N	N	N	N	Neutral Solid/Emulsies In Water
SC074	Industrial Paint Remover	2 Gal	5 Gal	Poly	9	N	N	N	Y	N	N	Oil/Flammable/Floats In Water
SC075	Used Oil Bucket	3 Gal	5 Gal	Bucket	9	N	N	N	Y	Y	N	Combustible/Flammable/Emulsifies
SC076	No Label	5 Gal	5 Gal	Poly	Oil	N	N	N	Y	N	N	Oil Material
SC077	No Label	5 Gal	5 Gal	Poly	Oil	N	N	N	N	N	N	Oil Material/Not Flammable
SC078	No Label	5 Gal	5 Gal	Poly	Oil	N	N	N	N	N	N	Oil Material/Not Flammable
SC079	No Label	5 Gal	5 Gal	Poly	Oil	N	N	N	N	N	N	Oil Material/Sugar Material
SC080	No Label	2 Gal	5 Gal	Poly	Oil	N	N	N	N	N	N	Oil Material/Not Flammable

Container ID	Container Label	Material Volume	Container Volume	Container Type	HAZCAT Results							
					pH	Water Reactive	Cyanide	Oxidizer	Flammable	Explosive	Organo-halide	Category
SS01	No Label-Plating Waste	1/2 Full	Supersack	Supersack	12	N	N	N	N	N	N	Base Solid
SS02	No Label-White Powder	10 lbs	10 lbs	Bag	4	N	N	N	N	N	N	Neutral Solid
SS03	Trelotini Strip Au	10 lbs	10 lbs	Bag	10	N	Y	N	N	N	N	Solid Cyanide
SS04	No Label - Grey Polish	40 lbs	20 Gal	Cut Drum	13	N	N	N	N	N	N	Base Solid
SS05	No Label-Green Dust	3 lbs	3 lbs	Bag	13	N	N	N	N	N	N	Base Solid

## Appendix B

## Map of the Site

Site location is marked with a star

